Volume 36
Number 24
September 3, 2019
Pages 1501 - 2048

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules

Kevin Stitt, Governor
Michael Rogers,
Secretary of State
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ISSN 0030-1728

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Notices of Rulemaking Intent

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

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

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

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #19-723]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 2. Incorporation by Reference
252:100-2-3 [AMENDED]
Subchapter 13. Open Burning
252:100-13-2 [AMENDED]
252:100-13-5 [AMENDED]
252:100-13-7 [AMENDED]
252:100-13-8 [AMENDED]
252:100-13-8.1 [NEW]
252:100-13-9 [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 7. Specific Operations
252:100-39-49 [REVOKED]
Appendix Q. Incorporation by Reference [REVOKED]
Appendix Q. Incorporation by Reference [NEW]

SUMMARY:

The Department is proposing to amend Oklahoma Administrative Code (OAC) 252:100-13, Open Burning, to conform the Department of Environmental Quality (DEQ) rules to statutory changes enacted in the 2019 legislative session. DEQ is also proposing to add a new section, 252:100-13-8.1, for this same purpose. The law changes added a provision for open burning of certain medical marijuana plant parts, and modified when an air curtain incinerator (ACI) is required. The proposed rulemaking would primarily affect the owners and operators of ACIs used outside of the Oklahoma City and Tulsa Metropolitan Statistical Areas, as well as medical marijuana commercial licensees, medical marijuana research facilities, and medical marijuana education facilities. In addition, changes were made in Section 13-2, Definitions, to reflect an update in terminology from "watch" to "alert" for ozone and particulate matter notifications. Section 13-7(1), Fire training, was also amended to clarify specific inspection and removal requirements as provided for in the Oklahoma Clean Air Act. The gist of this rulemaking is to implement the statutory changes made in the 2019 legislative session to add a provision for open burning of certain medical marijuana plant parts, and to modify when an ACI is required, as well as to make other minor clarifications to the rule.

The Department is proposing to amend OAC 252:100-39 to revoke Section 49, Manufacturing of fiberglass reinforced plastic products. The originally intended applicability of this rule is no longer practical with the promulgation of 40 CFR Part 63, Subpart WWWW - National Emission Standard for Hazardous Air Pollutants (NESHAP): Reinforced Plastic Composites Production. The gist of this rule proposal is to ease the regulatory burden on applicable facilities by revoking an outdated rule that was dually regulating alongside the federal NESHAP Subpart WWWW.

The Department is proposing to revoke and replace OAC 252:100, Appendix Q, Incorporation by Reference. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of Environmental Protection Agency (EPA) regulations in Appendix Q. The gist of these rule proposals and the underlying reason for the rulemaking is to incorporate the latest changes to EPA regulations, primarily those relating to the NESHAPs and New Source Performance Standards (NSPS).

AUTHORITY:

Environmental Quality Board; 27A Okla. Stat. (O.S.) §§ 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through -117.

COMMENT PERIOD:

Written comments may be submitted to the contact person from September 3, 2019, through October 7, 2019. Oral comments may be made at the October 16, 2019 hearing and at the November 8, 2019 Environmental Quality Board hearing.

PUBLIC HEARING:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, October 16, 2019, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Tuesday, November 8, 2019, at Woodward Conference Center, 3401 Centennial Drive, Woodward, OK 73801.

The Air Quality Advisory Council hearing shall also serve as the public hearing to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 CFR § 51.102 and 27A O.S. § 2-5-107(6)(c)

and to the State Title V (Part 70) Implementation Plan under the requirements of 40 CFR Part 70 and 27A O.S. § 2-5-112(B)(9).

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at https://www.deq.ok.gov/council-meeting-single/?meetingid=NTIwMg==.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be prepared and available on and after September 3, 2019 on the DEQ Air Quality Division website at https://www.deq.ok.gov/council-meeting-single/?meetingid=NTIwMg==. Copies may also be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for these proposals is Melanie Foster, Environmental Programs Manager, who can be reached by phone at (405) 702-4100. Please email written comments to DEQAQDRuleComments@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: Melanie Foster. The Air Quality Division fax number is (405) 702-4101.

ADDITIONAL INFORMATION:

Persons with disabilities should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4172. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #19-723; filed 8-6-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #19-721]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Incorporation by Reference

252:205-3-1. Reference to 40 CFR [AMENDED]

252:205-3-2. Incorporation by reference [AMENDED]

252:205-3-4. Terminology related to 40 CFR [AMENDED]

Subchapter 5. Additional Generator Requirements

252:205-5-2. SQG exemption from disposal plan requirements [AMENDED]

SUMMARY:

The gist of this rulemaking is to make DEQ's hazardous waste rules consistent with the federal regulations by incorporating by reference the regulations found in 40 CFR Parts 124 and 260-279, revised as of July 1, 2019. Changes to federal rules during this time period address the safe management of recalled (vehicle) airbags and revised management standards for hazardous waste pharmaceuticals which include an amendment to the hazardous waste listing for nicotine. Additionally, minor changes to specific subchapters are required in response to comments received from EPA. These changes regard errors identified during a review of RCRA (Authorization) Cluster XXV. This rulemaking will ensure that Oklahoma's hazardous waste rules are at least equivalent to the federal rules.

AUTHORITY:

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties; 27A O.S., §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105, and 2-7-106.

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from September 3, 2019 through October 10, 2019.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 10, 2019 at 10:00 a.m. at the Department of Environmental Quality offices, first floor, 707 N. Robinson, Oklahoma City, OK 73101. Before the Environmental Quality Board at the regularly scheduled meeting to be held in February 2020 at the Department of Environmental Quality offices, first floor, 707 N. Robinson, Oklahoma City, OK 73101.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department of Environmental Quality requests that business entities affected by these modifications provide the DEQ, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

A copy of the proposed rules may be obtained from the contact person or may be viewed on the DEQ web site at www.deq.ok.gov/land-protection-division/land-protection-division-proposed-rules/ or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement for the proposed rules will be on file at the DEQ and may be requested from the contact person listed below.

CONTACT PERSON:

Mike Edwards, Hazardous Waste Compliance and Inspection Section, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101 - 1677, e-mail at mike.edwards@deq.ok.gov, phone 405-702-5226, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5226 or by using TDD relay number 1-800-522-8506.

[OAR Docket #19-721; filed 8-6-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 210. HIGHWAY SPILL REMEDIATION

[OAR Docket #19-722]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

252:210-1-2. Definitions [AMENDED]
252:210-1-3. General provisions [AMENDED]
252:210-1-4. Prerequisites for new licenses and renewal [AMENDED]
252:210-1-5. Licensure requirements [AMENDED]
252:210-1-6. Licensee's duties; record keeping [AMENDED]
252:210-1-7. License suspension and revocation [AMENDED]

SUMMARY:

The gist of the rule that the Department is proposing is to: (1) add definitions for "Completion of Remediation" and "Contact Agency"; (2) clarify that all license holders are responsible for the actions of their sub-contractors; (3) create training requirements for new licensees; (4) create minimum requirements for the initial reporting of spills to the Department; (5) add language making the final reporting of spill cleanups mandatory to the Department; (6) add language to suspend or revoke a license for performing remediation services without authorization from lead officials or responsible parties and failing to report spills; and (7) make other minor clarifications and corrections.

AUTHORITY:

Environmental Quality Board; 27A O.S § 2-2-101; Hazardous Waste Management Advisory Council; 27A O. S. § 2-2-201; and 27A O.S. §§ 2-7-107 and 2-7-403.

COMMENT PERIOD:

Written comments may be submitted to the contact person from September 3, 2019, through October 10, 2019. Oral comments may be made at the Hazardous Waste Management Advisory Council meeting on October 10, 2019, and at the Environmental Quality Board meeting at the regularly scheduled meeting to be held in February 2020.

PUBLIC HEARING:

Before the Hazardous Waste Management Advisory Council on October 10, 2019 at 10:00 a.m. at the Department of Environmental Quality offices, first floor, 707 N. Robinson, Oklahoma City, OK 73101. Before the Environmental Quality Board at the regularly scheduled meeting to be held in February 2020 at the Department of Environmental Quality offices, first floor, 707 N. Robinson, Oklahoma City, OK 73101.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by the proposed rules provide to DEQ (during the comment period) the increase (in dollar amounts if possible) in the level of direct costs (e.g., fees) and indirect costs (e.g., reporting, record keeping, equipment, construction, labor, professional services, revenue loss), or other costs expected to be incurred due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at https://www.deq.ok.gov/environmental-complaints-division /highway-remediation/

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at https://www.deq.ok.gov/environmental-complaints-division /highway-remediation/.

CONTACT PERSON:

The contact person is Jennifer Handley. Jennifer may be contacted at: jennifer.handley@deq.ok.gov (e-mail) or (405) 702-6100 (phone). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

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

[OAR Docket #19-722; filed 8-6-19]

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 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 45. PROHIBITED PRACTICES AND EQUINE TESTING

[OAR Docket #19-719]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
325:45-1-2 [AMENDED]
325:45-1-4 [AMENDED]
325:45-1-6.1 [AMENDED]
325:45-1-6.2 [AMENDED]
325:45-1-19 [AMENDED]
325:45-1-20 [AMENDED]
325:45-1-24 [AMENDED]
325:45-1-27 [AMENDED]
325:45-1-29 [AMENDED]
AUTHORITY:
75 O.S. §253; 3A O.S. §204(A); Oklahoma Horse Racing Commission
ADOPTION:
June 13, 2019
APPROVED BY GOVERNOR:
July 29, 2019
EFFECTIVE:
August 14, 2019
EXPIRATION:
Effective through September 14, 2020, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Oklahoma Horse Racing Commission has determined that an emergency exists which requires amendments to the Commission's current rules in Chapter 45 relating to prohibited practices and equine testing procedures in order to reduce significant risks to the public safety. Horse racing is a dangerous sport and there is a remarkable increase in the number of accidents on race tracks around the United States this year injuring both jockeys and horses. The rules relating to medications and testing are based on a trend across the country to revise racing rules and set more protective standards. These amendments are necessary to immediately increase the protection of the health, safety, and welfare of horses and jockeys involved in Oklahoma horse racing prior to the next racing season.
GIST/ANALYSIS:
The proposed emergency rule amendments add, amend, and delete definitions; modify certain substance violations and thresholds; modify and clarify split testing procedures; update citation; and identify prohibited practices and certain mitigating factors.

CONTACT PERSON:
Kambi Maddy, (405) 522-5803, kambi.maddy@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF AUGUST 14, 2019:

325:45-1-2. Definitions

In addition to the definitions provided at 3A O.S. § 200.1, the following words or terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act 3A O.S. § 200 et seq.

"Analog" means any chemical with structural or chemical similarity to the parent or original chemical.

"Assistant Trainer" means a person qualified and licensed by the Commission as an Assistant Trainer.

"Biological sample" means any physical sample collected from any part of a horse.

"Bleeder" means a horse that is bleeding through one or both nostrils or hemorrhaging in the lumen of the respiratory tract during or following exercise or a race.

"Chemical" means a substance having a specific molecular composition.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Compound Substance" means combining two or more substances which constitutes the development of a new substance.

"Conditions of a race" means the requirements which determine the eligibility of a horse to be entered in a race.

"Day" means a 24-hour period beginning and ending at midnight.

"Enclosure" means all buildings and grounds of the Organization licensee and shall include both public areas and areas with restricted access.

"Entered horse" means a horse appearing on the overnight sheet posted by the Racing Secretary.

"Horse" means any equine including mares, fillies, stallions, colts, ridglings, and geldings.

"Intra-articular Injection" means the injection of a substance into a joint space.

"Listed threshold" means the maximum concentration of a substance detected in a post-race test which is permitted within a particular breed of horse by Commission rules.

"Metabolite" or **"metabolic derivative"** means any by-product resulting from a substance metabolizing within a horse's body.

"ml" means the standard unit of volume, milliliter.

"Naturally occurring substance" means any chemical, analog, metabolite, or metabolic derivative that exists naturally in the body of an untreated horse.

"ng" means the standard unit of weight, nanogram.

"Official Veterinarian" means a person who is licensed to practice veterinary medicine by the State of Oklahoma and employed by the Commission and qualified and licensed by the Commission as an Official Veterinarian.

"Official Work" means a timed work at a pre-determined distance, as recognized by Equibase

"Out-of-competition testing" means any testing within the enclosure by the Official Veterinarian that is not pre-race testing or post-race testing.

"Organization license" means a state requirement for any person or entity conducting a race meeting in Oklahoma within the minimum standards required by the Act and the rules of the Commission.

"Owner" means any person who holds, in whole or in part, any right, title or interest in a horse or any person who is a lessee or lessor of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Parenteral administration" means administration of substances by injection, including intravenous, intramuscular, or subcutaneous injections.

"Permitted substance" means any substance having a listed threshold for a particular breed of horse unless otherwise specified by Commission rules.

"pg" means the standard unit of weight, picogram.

"Plasma" means the fluid portion ofthe blood, which includes fibrinogen but does not include blood cells.

"Post-race testing" means the collection of biological samples by the Official Veterinarian or designee from any horse participating in a race and directed to report to the test barn following the finish of a race or as otherwise provided by Commission rules if the horse cannot report to the test barn.

"Practicing veterinarian" means a person employed by a trainer or owner to medically treat horses, is licensed to practice veterinary medicine by the State of Oklahoma, and is licensed as a veterinarian by the Commission.

"Pre-race testing" means the collection of biological samples by the Official Veterinarian or designee from any horse entered to participate in a race prior to the actual running of the race.

"Prima Facie evidence" means evidence sufficient to establish a fact unless rebutted by other evidence.

"Primary Laboratory" means the laboratory or subcontractor of the laboratory approved by the Commission for primary analysis of biological samples.

"Prohibited substance" means any substance, chemical, or analog that is not listed by Commission rules as a permitted substance for a particular breed of horse or is not a naturally occurring substance.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when live races are conducted at that racetrack.

"Racing Veterinarian" means a person who is licensed to practice veterinary medicine by the State of Oklahoma, employed by the organization licensee, and qualified and licensed by the Commission as a Racing Veterinarian.

"Referee Laboratory" means a Commission approved laboratory which accepts referee/split samples previously reported by the primary laboratory as positive for prohibited substances, reported as exceeding the listed threshold for a permitted substance, or reported as exceeding the ~~concentration that~~ listed threshold of a naturally ~~occuring~~occurring substance~~may occur by the primary laboratory~~.

"Safety Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Serum" means the liquid portion of plasma that remains after fibrinogen has been removed.

"Substance" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof and includes any drugs or medications referred to under the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq..

"Substance violation" means any violation of medication laws or the rules contained within this Chapter.

"Test Barn" means a structure with sufficient facilities to collect biological samples in the manner required by Commission rules.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"ug" means the standard unit of weight, microgram."

"Veterinarian's list" means the veterinarian's list specified by OAC 325:20-1-23.

"Week" means a seven (7) day period.

"Year" means a 365 day period.

325:45-1-4. Substance violations

(a) Except as authorized or restricted by the provisions of this Chapter and Chapter 40 of the rules of the Commission, no substance shall be given by parenteral administration to any horse within 24 hours prior to the ~~running of a~~scheduled post time for the first race ~~in which~~on the day the horse is entered to race.

(b) The primary laboratory's detection of a prohibited substance in a biological sample collected from any horse during out-of-competition testing, pre-race testing, or post-race testing by the Official Veterinarian or designee shall constitute prima facie evidence that a substance violation occurred and

may, at the discretion of the Stewards or Commission, result in summary suspension of the responsible trainer, disqualification of the horse, placement of the horse on the veterinarian's list, placement of the horse on the Stewards' list, and other penalties authorized by the Act and the rules of the Commission.

(c) The primary laboratory's detection of a permitted substance exceeding listed thresholds in a biological sample collected from any horse during post-race testing by the Official Veterinarian or designee shall constitute prima facie evidence that a substance violation occurred and may, at the discretion of the Stewards or Commission, result in summary suspension of the responsible trainer, disqualification of the horse, placement of the horse on the veterinarian's list, placement of the horse on the Stewards' list, and other penalties authorized by the Act and the rules of the Commission.

(d) The primary laboratory's detection of a naturally occurring substance exceeding listed thresholds or exceeding concentrations that the substance may naturally occur in a biological sample collected from any horse during post-race testing by the Official Veterinarian or designee shall constitute prima facie evidence that a substance violation occurred and may, at the discretion of the Stewards or Commission, result in summary suspension of the responsible trainer, disqualification of the horse, placement of the horse on the veterinarian's list, placement of the horse on the Stewards' list, and other penalties authorized by the Act and the rules of the Commission.

(e) It shall be presumed that biological samples tested by a laboratory approved by the Commission are collected from the horse in question; that the integrity of the biological sample is preserved; that all accompanying procedures of collection, preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample collected from the horse in question and correctly reflects the condition of the horse on the day the biological sample was collected.

(f) Except as otherwise provided by Commission rules, the owner or owners of a horse disqualified for a substance violation shall not participate in any portion of the purse or stakes and any trophy or other awards shall be returned to the Stewards for redistribution to other race participants.

(g) The trainer or owner contesting prima facie evidence of a substance violation shall have the burden of proof to establish that no substance violation occurred or that other evidence mitigates the severity of punishment.

325:45-1-6.1. Listed thresholds for Thoroughbreds

(a) The thresholds listed in this section shall be the considered listed threshold for permitted substances or, if specified as such, naturally occurring substances in Thoroughbreds.

(b) Non-steroidal anti-inflammatories shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) Diclofenac: 5 ng/ml in biological samples consisting of plasma or serum;

(2) ~~Dipyrone: 20 ng/ml in biological samples consisting of plasma or serum;~~

~~(3)~~ Firocoxib: 20 ng/ml in biological samples consisting of plasma or serum;

(~~4~~3) Flunixin: 20 ng/ml in biological samples consisting of plasma or serum;

(~~5~~4) Ketoprofen: 2 ng/ml in biological samples consisting of plasma or serum;

~~(6) Naproxen: 750 ng/ml in biological samples consisting of plasma or serum;~~ or

(~~7~~5) Phenylbutazone: 2 ug/ml in biological samples consisting of plasma or serum.

(c) Corticosteroids shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) Betamethasone: 10 pg/ml in biological samples consisting of plasma or serum;

(2) Dexamethasone: 5 pg/ml in biological samples consisting of plasma or serum;

(3) Isoflupredone: 100 pg/ml in biological samples consisting of plasma or serum;

(4) Methylprednisolone: 100 pg/ml in biological samples consisting of plasma or serum;

(5) Prednisolone: 1ng/ml in biological samples consisting of plasma or serum; or

(6) Triamcinolone Acetonide: 100 pg/ml in biological samples consisting of plasma or serum.

(d) Other substances shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) Acepromazine: 10 ng/ml in biological samples consisting of urine;

(2) Albuterol: 1 ng/ml in biological samples consisting of urine;

(3) Butorphanol: 300 ng/ml of total Butorphanol in biological samples consisting of urine or 2 ng/ml of free butorphanol in biological samples consisting of plasma or serum;

(4) Cetirizine: 6 ng/ml in biological samples consisting of plasma or serum;

(5) Cimetidine: 400 ng/ml in biological samples consisting of plasma or serum;

(6) Clenbuterol: 140 pg/ml in biological samples consisting of urine or at the level of detection in biological samples consisting of plasma or serum;

(7) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in biological samples consisting of plasma or serum;

(8) Detomidine: 1 ng/ml in biological samples consisting of plasma or serum;

(9) Dimethyl Sulfoxide (DMSO): 10 ug/ml in biological samples consisting of plasma or serum;

(10) Furosemide: 100 ng/ml in biological samples consisting of plasma or serum;

(11) Glycopyrrolate: 3 pg/ml in biological samples consisting of plasma or serum;

(12) Guaifenesin: 12 ng/ml in biological samples consisting of plasma or serum;

(13) Lidocaine: ~~25 pg/ml~~20 pg/ml of total 30H-lidocaine in biological samples consisting of plasma or serum;
(14) Mepivacaine: 10 ng/ml in biological samples consisting of urine or at the level of detection in biological samples consisting of plasma or serum;
(15) Methocarbamol: 1 ng/ml in biological samples consisting of plasma or serum;
(16) Omeprazole: omeprazole sulfide- 10 ng/ml in biological samples consisting of plasma or serum;
(17) Procaine Penicillin: 25 ng/ml in biological samples consisting of plasma or serum;
(18) ~~Pyrilamine: 50 ng/ml in biological samples consisting of plasma or serum;~~
~~(19)~~ Ranitidine: 40 ng/ml in biological samples consisting of plasma or serum; or
(~~20~~19) Xylazine: 200 pg/ml in biological samples consisting of plasma or serum.

(e) Androgenic-Anabolic Steroids (AAS) shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) The naturally occurring substance, boldenone, shall be permitted in concentrations not exceeding:
(A) 25 pg/ml in biological samples consisting of plasma or serum for all horses, regardless of sex;
(B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or
(C) 15 ng/ml in biological samples consisting of urine for male horses other than geldings.

(2) The naturally occurring substance, nandrolone, shall be permitted in concentrations not exceeding:
(A) 25 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;
(B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or
(C) 45 ng/ml in biological samples consisting of urine for male horses other than geldings.

(3) The naturally occurring substance, testosterone, shall be permitted in concentrations not exceeding:
(A) ~~25 pg/ml~~100 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;
(B) 55 ng/ml in biological samples consisting of urine for fillies, mares (unless in foal); or
(C) 20 ng/ml in biological samples consisting of urine for geldings.
(D) The concentration of testosterone is not regulated or restricted in fillies or mares that are confirmed pregnant on the day of racing or in male horses other than geldings.

(f) ~~Environmental contaminants shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding listed threshold:~~
~~(1) Arsenic: 0.3 ug/ml total arsenic in biological samples consisting of urine;~~
~~(2) Atropine: 70 ng/ml in biological samples consisting of urine;~~
~~(3) Gamma Aminobutyric Acid (GABA): 110 ng/ml in biological samples consisting of plasma or serum;~~
~~(4) Hydrocortisone: 1 ug/ml in biological samples consisting of urine;~~
~~(5) Methoxytyramine: 4 ug/ml, in biological samples consisting of urine;~~
~~(6) Salicylate, Salicylic Acid: 750 ug/ml in biological samples consisting of urine or 6.5 ug/ml in biological samples consisting of plasma or serum;~~
~~(7) Theobromine: 2 ug/ml in biological samples consisting of urine or 0.3 ug/ml in biological samples consisting of plasma or serum;~~
~~(8) Cobalt: 50 ng/ml in biological samples consisting of plasma or serum;~~
~~(9) Caffeine: 100 ng/ml in biological samples consisting of plasma or serum; or~~
~~(10) Estrandiol: 0.045 ug/ml in biological samples consisting of urine for male horses other than geldings.~~

~~(g)~~ The use of non-steroidal anti-inflammatories and corticosteroids are subject to the additional conditions:
(1) The presence of more than two permitted non-steroidal anti-inflammatories in a biological sample consisting of plasma or serum is prohibited; or
(2) The presence of more than two corticosteroids in a biological sample consisting of plasma or serum is prohibited.

325:45-1-6.2. Listed thresholds for Quarter Horses, Paints, and Appaloosas

(a) The thresholds listed in this section shall be considered the listed threshold for permitted substances or, if specified as such, naturally occurring substances in Quarter Horses, Paints, and Appaloosas.

(b) Non-steroidal anti-inflammatories shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:
(1) Diclofenac: 5 ng/ml in biological samples consisting of plasma or serum;
(2) ~~Dipyrone: 20 ng/ml in biological samples consisting of plasma or serum;~~
~~(3)~~ Firocoxib: 20 ng/ml in biological samples consisting of plasma or serum;
(~~4~~3) Flunixin: 20 ng/ml in biological samples consisting of plasma or serum;
(~~5~~4) Ketoprofen: 2 ng/ml in biological samples consisting of plasma or serum;
~~(6) Naproxen: 750 ng/ml in biological samples consisting of plasma or serum;~~ or
(~~7~~5) Phenylbutazone: 2 ug/ml in biological samples consisting of plasma or serum.

(c) Corticosteroids shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:
(1) Betamethasone: 10 pg/ml in biological samples consisting of plasma or serum;

(2) Dexamethasone: 5 pg/ml in biological samples consisting of plasma or serum;

(3) Isoflupredone: 100 pg/ml in biological samples consisting of plasma or serum;

(4) Methylprednisolone: 100 pg/ml in biological samples consisting of plasma or serum;

(5) Prednisolone: 1ng/ml in biological samples consisting of plasma or serum; or

(6) Triamcinolone Acetonide: 100 pg/ml in biological samples consisting of plasma or serum.

(d) Other substances shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) Acepromazine: 10 ng/ml in biological samples consisting of urine;

(2) Butorphanol: 300 ng/ml of total Butorphanol in biological samples consisting of urine or 2 ng/ml of free butorphanol in biological samples consisting of plasma or serum;

(3) Cetirizine: 6 ng/ml in biological samples consisting of plasma or serum;

(4) Cimetidine: 400 ng/ml in biological samples consisting of plasma or serum;

(5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in biological samples consisting of plasma or serum;

(6) Detomidine: 1 ng/ml in biological samples consisting of plasma or serum;

(7) Dimethyl Sulfoxide (DMSO): 10 ug/ml in biological samples consisting of plasma or serum;

(8) Furosemide: 100 ng/ml in biological samples consisting of plasma or serum;

(9) Glycopyrrolate: 3 pg/ml in biological samples consisting of plasma or serum;

(10) Guaifenesin: 12 ng/ml in biological samples consisting of plasma or serum;

(11) Lidocaine: ~~25 pg/ml~~ 20 pg/ml of total 30H-lidocaine in biological samples consisting of plasma or serum;

(12) Mepivacaine: 10 ng/ml in biological samples consisting of urine or at the level of detection in biological samples consisting of plasma or serum;

(13) Methocarbamol: 1 ng/ml in biological samples consisting of plasma or serum;

(14) Omeprazole: omeprazole sulfide- 10 ng/ml in biological samples consisting of plasma or serum;

(15) Procaine Penicillin: 25 ng/ml in biological samples consisting of plasma or serum;

(16) ~~Pyrilamine: 50 ng/ml in biological samples consisting of plasma or serum;~~

~~(17)~~ Ranitidine: 40 ng/ml in biological samples consisting of plasma or serum; or

(~~18~~17) Xylazine: 200 pg/ml in biological samples consisting of plasma or serum.

(e) Androgenic-Anabolic Steroids (AAS) shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) The naturally occurring substance, boldenone, shall be permitted in concentrations not exceeding:

(A) 25 pg/ml in biological samples consisting of plasma or serum for all horses, regardless of sex;

(B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or

(C) 15 ng/ml in biological samples consisting of urine for male horses other than geldings.

(2) The naturally occurring substance, nandrolone, shall be permitted in concentrations not exceeding:

(A) 25 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;

(B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or

(C) 45 ng/ml in biological samples consisting of urine for male horses other than geldings.

(3) The naturally occurring substance, testosterone, shall be permitted in concentrations not exceeding:

(A) ~~25 pg/ml~~100 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;

(B) 55 ng/ml in biological samples consisting of urine for fillies, mares (unless in foal); or

(C) 20 ng/ml in biological samples consisting of urine for geldings.

(D) The concentration of testosterone is not regulated or restricted in fillies or mares that are confirmed pregnant on the day of racing or in male horses other than geldings.

(f) ~~Environmental contaminants shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding listed threshold:~~

~~(1) Arsenic: 0.3 ug/ml total arsenic in biological samples consisting of urine;~~

~~(2) Atropine: 70 ng/ml in biological samples consisting of urine;~~

~~(3) Gamma Aminobutyric Acid (GABA): 110 ng/ml in biological samples consisting of plasma or serum;~~

~~(4) Hydrocortisone: 1 ug/ml in biological samples consisting of urine;~~

~~(5) Methoxytyramine: 4 ug/ml, in biological samples consisting of urine;~~

~~(6) Salicylate, Salicylic Acid: 750 ug/ml in biological samples consisting of urine or 6.5 ug/ml in biological samples consisting of plasma or serum;~~

~~(7) Theobromine: 2 ug/ml in biological samples consisting of urine or 0.3 ug/ml in biological samples consisting of plasma or serum;~~

~~(8) Cobalt: 50 ng/ml in biological samples consisting of plasma or serum;~~

~~(9) Caffeine: 100 ng/ml in biological samples consisting of plasma or serum; or~~

~~(10) Estrandiol: 0.045 ug/ml in biological samples consisting of urine for male horses other than geldings.~~

~~(g)~~ The use of non-steroidal anti-inflammatories and corticosteroids are subject to the additional conditions:

(1) The presence of more than two permitted non-steroidal anti-inflammatories in a biological sample consisting of plasma or serum is prohibited; or

(2) The presence of more than two corticosteroids in a biological sample consisting of plasma or serum is prohibited.

325:45-1-19. Official testing

(a) Only laboratories approved by the Commission may be used to test biological samples collected from designated horses.

(b) Approved primary and referee laboratories shall report directly to the Commission and Stewards.

(c) The Commission shall publish a list of approved referee laboratories available for split testing.

(d) Laboratories conducting testing of biological samples shall be accredited by the ~~American Racing Commissioners International~~Racing Medication and Testing Consortium (RMTC) and approved by the Commission.

325:45-1-20. Split tests

(a) When the quantity of biological samples collected by operation of Commission rules permits, each test sample shall be divided into two portions so that one portion shall be used for primary testing and the second portion shall, if available, be retained for split testing. OHRC makes no guarantee that the amount of sample it was able to collect will be sufficient for split testing. All samples taken by OHRC personnel are under the jurisdiction of and shall remain the property of OHRC at all times.

(b) Biological sample consisting of blood shall be collected and processed as provided by Commission rules. Biological samples consisting of urine shall be collected if available. Other biological samples may be collected at the direction of the Stewards or the Commission.

(c) The Official Veterinarian or designee shall be responsible for the freezing, storage, safeguarding, and shipment of biological samples to primary or referee laboratories.

(d) When biological samples are available for split testing, ~~an owner or~~a trainer and/or owner may request a split test, subject to the following conditions:

(1) The ~~owner or~~ trainer and/or owner shall make the request for a split test in writing within ~~forty-eight (48)~~seventy-two (72) hours following notification of a substance violation.

(2) ~~All costs for split testing, including the shipment and testing of biological samples, shall be the financial responsibility of the requesting trainer or owner~~When a substance violation occurs, OHRC will submit split testing forms to all the approved laboratories. All laboratories agreeing to accept the split will be presented to the trainer and/or owner, at which time the person requesting the split shall have forty-eight (48) hours to select the laboratory. The trainer and/or owner requesting to have the split sample tested shall be responsible for all charges and costs incurred in transporting and testing the split sample.

(3) Payment for the costs ~~of split testing shall be paid within seventy-two (72) hours following notification of the cost of split testing to the requesting trainer or owner. Failure to make timely payment of split testing costs shall be deemed a waiver of a person's right to conduct a split test~~incurred in transporting and testing the split sample must be received by the OHRC within five (5) working days of the trainer and/or owner being provided a list of referee laboratories agreeing to accept said split. If the trainer and/or owner fails to notify the OHRC in writing, of their choice of referee laboratory agreeing to accept the split sample, along with payment within this time, the split sample will not be released or shipped by the OHRC and said trainer and/or owner will have relinquished his/her right to have the split sample tested.

(4) ~~Payment for the costs of split testing shall be in the form of a check from the horseman's bookeeper account or cashier's check. No other forms of payment shall be accepted~~Upon verified completion of all prerequisites, OHRC personnel shall ensure that the split sample is sent to the designated laboratory for testing.

(5) The trainer, the trainer's authorized representative or employee, the owner, or other licensed person designated by the owner may witness the packaging and shipping of biological samples. Failure to appear at the appointed time to witness the packaging and shipping of biological samples constitutes a waiver of the right to do so;

(6) Failure of a trainer and/or owner to submit a timely request for split testing or failure to make timely payment for the costs of split testing shall constitute a waiver of any and all rights to have a split test performed.

(e) The results of the split test shall not prohibit the Commission from imposing appropriate penalties for substance violations, including the disqualification of a horse or other penalties imposed against the trainer.

(1) If the primary test results are not confirmed by the split test, the Commission shall reimburse the trainer and/or owner requesting the split test the cost of shipment and testing.

(2) Contradictory split test results or split test results that do not confirm the primary test results may be offered by ~~an owner or~~a trainer and/or owner as evidence to rebut the prima facie evidence of a substance violation established by the primary test results. However, a request for a split test shall not obligate Commission staff to submit evidence of confirmatory split test results for the purposes of proving that a substance violation occurred.

(f) Nothing in this Section shall prevent the Commission or Executive Director from ordering first use of both sample portions for testing purposes.

325:45-1-24. Substance classification and penalties

Upon a finding of any substance violation, the Stewards shall consider the classification level of the substance violation as currently established by the UNIFORM CLASSIFICATION GUIDELINES OF FOREIGN SUBSTANCES (Version

~~13.4~~14.0) as promulgated by the Association of Racing Commissioners International, Inc. and may impose penalties and disciplinary measures consistent with the recommendations contained therein, except not to conflict with the mandates of 325:45-1-9 and 325:45-1-9.1. Provided, however, that in the event a majority of the Stewards determine that aggravating or mitigating circumstances require imposition of a different penalty than the penalty suggested by the guidelines, the Stewards may impose a different penalty. In the event a majority of the Stewards wish to impose a penalty in excess of the authority granted them by 325:1-1-7, the Stewards may impose the maximum penalty authorized by state law and refer the matter to the Commission with specific recommendations for further action.

325:45-1-27. Prohibited practices ~~and Certain Penalties~~

The following ~~items~~substances and/or therapies shall be prohibited within the enclosure:

(1) ~~Any substance which may endanger the health and welfare of a horse~~It is a violation of this regulation to possess or use substances that are detrimental to the health and welfare of a horse, on the premises of a facility under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance;

(2) ~~Any substance which has not been approved by the United States Food and Drug Administration for use in humans or animals~~It is a violation to possess, use, or distribute a substance on the premises of a facility under the jurisdiction of the Commission if there is an FDA approved equivalent of that substance available for purchase;

(3) ~~Erythropoitin~~The administration of Erythropoietin, Darbepoietin, Oxyglobin, and/or Hemopure to a horse;

(4) ~~Darbepoietin;~~

~~(5) Oxyglobin;~~

~~(6) Hemopure;~~

~~(7)~~ Any substance that abnormally enhances the oxygenation of body tissue;

(~~8~~5) Any device or machine which may endanger the health and welfare of a horse or may endanger the safety of a rider;

(~~9~~6) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines unless:

(A) Any treated horse shall not race or receive an official work for a minimum of ten (10) days following treatment.

(B) The use and possession of Extracorporeal Shock Wave Therapy machines shall be restricted to practicing veterinarians.

(C) Extracorporeal Shock Wave Therapy machines within the enclosure shall be registered with and approved by the Commission.

(D) Any treatments administered using a Extracorporeal Shock Wave Therapy machine shall be reported to the Official Veterinarian by the trainer or practicing veterinarian ~~no less than~~within twenty-four (24) hours ~~following~~of treatment. The report must include veterinary diagnosis and diagnostic radiographs and/or ultrasound performed within seven (7) days prior to the region receiving the shockwave therapy.

(~~10~~7) The administration, within 24 hours prior to ~~a~~the scheduled post time for the first race on the day the horse is entered to race, of an alkalizing substance that can alter the pH of serum or plasma, concentration of bicarbonates, or total dissolved carbon dioxide in a horse.

(~~11~~8) A blood gas machine or ozone generator.

(~~12~~9) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the scheduled post time ~~of the~~for the first race ~~in which~~on the day the horse is entered ~~is prohibited~~to race.

(10) The use of a nebulizer for the administration of any substance within 24 hours prior to the scheduled post time for the first race on the day the horse is entered to race.

(11) No horse shall run in a race within six (6) days after receiving an Intra-articular injection.

325:45-1-29. Environmental contaminants and substances of human use

(a) ~~The Commission recognizes that testing of biological samples may detect the presence of prohibited substances that are caused by environmental contamination and not through any fault of the trainer~~Environmental contaminants are either endogenous to the horse or can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage, or transportation phases.

(b) ~~Any biological sample containing an environmental contaminant shall be treated as a substance violation; however, evidence may be presented showing that the substance violation is the likely result of environmental contamination. The Stewards shall consider evidence of environmental contamination as a mitigating or explanatory evidence when making a determination about the appropriate punishment for the substance violation~~Substances of human use and addiction may be found in the horse due to its close association with humans.

(c) If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination, including inadvertent exposure due to human drug use, or dietary intake, or is endogenous to the horse, those factors should be considered in mitigation of any disciplinary action taken against the affected trainer. Disciplinary action may only be taken if test sample results exceed the regulatory thresholds in version 4.0 of the ARCI Endogenous, Dietary, or Environmental Substances Schedule.

[OAR Docket #19-719; filed 8-1-19]

Permanent Final Adoptions

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

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

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

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

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES

[OAR Docket #19-656]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:1-1-2 [AMENDED]
40:1-1-3 [AMENDED]
40:1-1-4 [AMENDED]
40:1-1-5 [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 5, 2018
COMMENT PERIOD:
January 3, 2019 through February 4, 2019
PUBLIC HEARING:
February 5, 2019
ADOPTION:
February 12, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 14, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The rules remove unnecessary language that was repeated in state statutes.
CONTACT PERSON:
Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, kevin.behrens@bot.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2019:

40:1-1-2. Organization, powers, and duties

(a) **Statutory basis.** The Board of Tests for Alcohol and Drug Influence, in this Title called the Board, was recreated pursuant to Title 47, Section 759 of the Oklahoma Statutes, and is the successor agency to the Board of Chemical Tests for Alcoholic Influence.

~~(b) **Composition.** The Board consists of the following eight members:~~

~~(1) The Dean of the University of Oklahoma College of Medicine, or designee,~~

~~(2) The Commissioner of Public Safety, or designee~~

~~(3) The Director of the Oklahoma State Bureau of Investigation, or designee~~

~~(4) The State Commissioner of Health, or designee~~

~~(5) The Director of the Council on Law Enforcement Education and Training, or designee~~

~~(6) A certified peace officer, who is a member of a local law enforcement agency, selected by the Oklahoma Sheriffs and Peace Officers Association~~

~~(7) A person selected by the Oklahoma Association of Chiefs of Police.~~

~~(8) The Dean of the Oklahoma State University College of Osteopathic Medicine, or a designee.~~

(~~c~~b) **Powers, authority, and duties.** The powers, authority, and duties of the Board are set forth in Title 47, Sections 751-761 of the Oklahoma Statutes, and in other applicable provisions of the Oklahoma Statutes.

~~(d) **Officers of the board.** The Board elects a Chair and Vice Chair from its membership every two years. A State Director of Tests for Alcohol and Drug Influence is appointed by the Board, from among qualified persons, and serves at the pleasure of the Board and until such appointment is terminated by the Board or by resignation or other termination of service by the appointee.~~

40:1-1-3. General course and method of operation

(a) **Office(s) of the board.** The principal Administrative Office of the Board shall be located ~~in Oklahoma City, Oklahoma,~~ at a site designated by the Board.

(b) **Transaction of business with the board by the public.** Members of the public and others desiring to contact or make inquiries and submissions to the Board may do so in person at the principal Administrative Office of the Board, during normal and usual business hours for State of Oklahoma agencies, or by mail addressed to: State Director of Tests for Alcohol and Drug Influence, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307 Oklahoma City, Oklahoma 73136, or through the Board's website at www.ok.gov/bot.

(c) **Access to records.**

(1) Copies of all Rules and Regulations adopted by the Board, and of all other written statements of policy or interpretations of general applicability by the Board, and of all final orders, decisions, and opinions of general

applicability may be inspected, unless otherwise provided by law, at the principal Administrative Office of the Board during its normal business hours. Such records shall not be removed from the Board's office or the Board's custody and control for the purpose of inspection.

(2) Copies of Rules and Regulations adopted by the Board are also on file and available for public inspection in the Office of Administrative Rules, Office of the Secretary of State.

(d) **Meetings.** Meetings of the Board are conducted, in compliance with the Oklahoma Administrative Procedures Act, the Oklahoma Open Meeting Act and other applicable statues, as follows:

~~(1) Regularly scheduled meetings of the Board will be held at least twice yearly with proper public notice.~~

~~(2) Special meetings of the Board may be called at any time with proper public notice.~~

~~(3) Emergency meetings of the Board may be called whenever required and statutorily permitted, and without prior public notice if so required by exigent circumstances.~~

~~(4) Continued or reconvened meetings of the Board may be called as required to complete business of a prior meeting.~~

~~(5) All meetings of the Board shall be open to the public, except as otherwise provided by law.~~

(~~6~~1) Meetings of the Board shall be presided over by the Chairman of the Board. In the absence of the Chairman, the Vice-Chairman will preside over the meeting. In the event that the Chairman and Vice-Chairman are not present at a meeting, the Board may elect from its members a chairman pro-tempore who shall preside at that meeting. All meetings of the Board shall be governed by applicable Oklahoma statutes; and ROBERT'S RULES OF ORDER, latest available edition, shall serve as the parliamentary authority for meetings of the Board unless otherwise required by law or otherwise voted. An affirmative vote by a simple majority of the members present at a meeting, at which a quorum exists, shall be necessary to adopt any motion presented before the meeting.

(~~7~~2) Minutes or proceedings of all meetings of the Board shall be timely prepared and kept in accordance with the Open Meetings Act. ~~by the State Director of Tests for Alcohol and Drug Influence, or a designee. They shall consist of a summary of the proceedings of each meeting showing:~~

~~(A) Members of the Board present or absent~~

~~(B) All matters considered by the Board~~

~~(C) All actions taken by the Board~~

~~(D) The vote of each member of the Board on any motion or other action taken by vote~~

~~(E) Manner and time of public notice of the meeting~~

~~(F) Other items as required.~~

(e) **Administration.**

(1) The general conduct and administration of the affairs and functions of the ~~Board~~agency, between meetings ~~thereof~~of the Board, shall be vested in the State Director of Tests for Alcohol and Drug Influence. The State Director of Tests for Alcohol and Drug Influence shall have authority to act appropriately on behalf and as agent of the Board, as permitted or required by law, on all matters within the Rules adopted by the Board or within existing Board policy, or as otherwise directed by the Board.

(2) The Chairman, or in the absence of the Chairman, the Vice-Chairman, or in the absence of the Chairman and Vice-Chairman the Chairman pro-tempore, shall have the following duties, responsibilities, and authority:

~~(A) Call meetings as set forth in these rules.~~

(~~B~~A) Conduct meetings as set forth in these rules.

(~~C~~B) Sign documents, on behalf of the Board, memorializing Board action.

(3) The State Director of Tests for Alcohol and Drug Influence shall have the following duties, responsibilities, and authority:

(A) Under the overall guidance of the Board, to conduct and administer the affairs and functions of the Board between meetings thereof.

(B) As permitted or required by law, to act appropriately on behalf and as agent of the Board on all matters within the Rules adopted by the Board or within existing Board policy, or as otherwise directed by the Board.

(C) To function as the technical and administrative director of the State's program of testing for alcohol and drug influence in connection with traffic law enforcement, and of pertinent educational and training activities; and to provide direction, supervision, consultation, advice, and assistance as required on the technical and administrative aspects of such program and activities to all State and local agencies and officials.

(D) To administer, implement, enforce, and carry out the provisions of the Rules and the policies and procedures adopted by the Board.

(E) To attend meetings of the Board and render reports at such meetings, and otherwise when requested by the Board.

(F) To carry on correspondence and other communications on behalf and as an agent of the Board.

(G) To perform other duties and functions as directed from time to time by the Board, or as required by law, or as required properly to effectuate the provisions of the Chemical Tests Act (47 O.S., Sections 751-761) and other statutes within the purview of the Board.

(f) **Seal.** The official seal of the Board shall consist of the words 'Board of Tests for Alcohol and Drug Influence-State of Oklahoma' in a circular band surrounding the official Star of the Great Seal of the State of Oklahoma.

40:1-1-4. Policies and procedures for rule-making

(a) **General policies.** In proposing, considering, adopting, amending, or repealing Rules and Regulations and taking other

actions of general applicability, the Board shall act in ~~full~~ compliance with the Oklahoma Administrative Procedures Act, the Open Meeting Act, and other provisions of law.

(b) **Cumulative effect of rules.** The contents of this Chapter shall be cumulative to other Rules and Regulations of the Board, and shall not nullify, replace, or supersede other currently effective Rules and Regulations adopted by the Board.

(c) **Severability of rules.** The provisions of the various Sections of this Chapter, and of every other currently effective Rule and Regulation adopted by the Board, are severable. If any parts or provisions of any such Rule and Regulation shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of such Rule and Regulation.

(d) **Rule-making proposals.** Rule-making may be commenced by the Board on its own initiative. Any interested party may also petition the Board, in accordance with procedures set forth in this Chapter, to adopt, amend, or repeal a Rule and Regulation. The Board will afford all properly interested parties reasonable opportunity to submit views, data, information, or arguments concerning action proposed or under consideration by the Board on a Rule and Regulation or concerning a request that the Board promulgate, amend, or repeal a Rule and Regulation.

(e) **Rule-making petitions.** Petitions to the Board for promulgation, amendment, or repeal of a Rule and Regulation shall be in the following form and contain the following information.

(1) Petitions must be submitted in legible typewritten form, with the original copy submitted, and shall be submitted in person or by mail to the State Director of Tests for Alcohol and Drug Influence at the Board's principal Administrative Office.

(2) Petitions must clearly identify the submitting party or parties by name, address, official title, and complete business address; and must include a clear statement reflecting the interest of the submitter(s) in such petition and the action to which it pertains, and the real party(ies) of Interest if submission is by an agent or attorney.

(3) Every petition must clearly state that such petition is for promulgation of a new Rule and Regulation, or for the amendment of an existing Rule and Regulation, or for the repeal of an existing Rule and Regulation. A given petition may pertain to only one Rule and Regulation, and individual petitions are required for requested action on different Rules and Regulations.

(4) If the petition requests action on an existing Rule and Regulation, the complete verbatim text of the existing rule language shall be included in the petition, together with the exact change(s) or addition(s) or deletion(s) or repeal requested. If the petition pertains to promulgation of a new and additional Rule and Regulation, the petition shall set forth in clear itemized form the specific detailed provisions which the Board is asked to consider.

(5) All petitions must clearly and separately state the factual basis, reasons, legal grounds, and public policy and technical justifications for each action requested of the Board. All available supporting documents, records, studies, and information bearing on the issue and available to the petitioner(s) must accompany the petition. The petition shall also contain or be accompanied by the names and addresses of all persons known to the petitioner(s) who are concerned with the subject matter of the petition.

(6) Petitions must be signed and endorsed by all petitioning parties, or their authorized legal representative(s); and such signature(s) and endorsement(s) must be duly attested to by a notary public.

(f) **Action on petitions.** All petitions shall be examined to determine whether the procedural requirements have been met and whether the facts, justifications and other submissions afford a reasonable basis for rule-making. Petitions found to be not in proper form or lacking the necessary reasonable basis for consideration by the Board will be returned to the submitter(s). Petitioner(s) will be notified of whether and, if so, when the Board will consider rule-making action on a given petition. Action on petitions accepted will be considered by the Board at a regularly scheduled meeting or at a special meeting, as appropriate. If a petition for consideration of rule-making by the Board is accepted, the proposed action(s) shall thereafter be treated by the Board identically to other rule-making procedures and in ~~full~~ accordance with the Administrative Procedures Act.

40:1-1-5. Rules of practice for individual proceedings

(a) **General policies.** This Section applies to Orders formulated by the Board and to Individual Proceedings of the Board, where those terms have the respective meaning set forth in Title 75, O.S., Section 250.3. In formulating orders or conducting individual proceedings, the Board shall act in ~~full~~ compliance with the Oklahoma Administrative Procedures Act, and other applicable provisions of law, and otherwise in accordance with procedure and practices determined or designated by the Board.

(b) **Declaratory rulings and other orders.** Declaratory rulings as to the applicability of any Rule and Regulation or other order of the Board may be commenced and issued by the Board on its own initiative. Other orders, constituting all or part of an intermediate or final decision, and whether affirmative, negative, injunctive or declaratory in form [in matters other than rule-making and the exceptions provided for in 75 O.S., Section 250.3(17)] may also be made and issued by the Board on its own initiative. Any ~~properly~~ interested party may also petition the Board, in accordance with procedures set forth hereinafter, to make and issue a declaratory ruling, or to amend any such declaratory ruling, or to make and issue any other order as defined in this Section. The Board will afford all ~~properly~~ interested parties reasonable opportunity to request a declaratory ruling or other order and to submit views, data, information, or arguments in support of such a request.

(c) **Petitions for declaratory rulings and other orders.** Petitions to the Board for declaratory rulings or other orders, other than matters taken up by the Board on its own intiative, shall be in the following form and contain the following information:

(1) Petitions must be submitted in legible typewritten form, with the original copy submitted, and shall be submitted in person or by mail to the State Director of Tests for Alcohol and Drug Influence at the Board's principal Administrative Office.

(2) Petitions must clearly identify the submitting party or parties by name, address, official title, and complete business address; and must include a clear statement reflecting the interest of the submitter(s) in such petition and the action to which it pertains, and the real party(ies) of interest if submission is by an agent or attorney.

(3) Every petition must clearly state that such petition is (a) for promulgation of a declaratory ruling as to applicability of any Rule and Regulation or order of the Board (which Rule and Regulation or other order shall be clearly and fully identified), or (b) for promulgation of any other order. A given petition may pertain to only one requested declaratory ruling or other order, and individual petitions are required for requested declaratory rulings or other orders on separate subjects.

(4) If the petition requests a declaratory ruling on a Rule and Regulation or any other order of the Board, the complete verbatim text of the existing rule or order language shall be included in the petition, together with the exact inquiry relating thereto. If the petition pertains to promulgation of a new order or amendment of an existing order, the petition shall set forth in clear itemized form the specific detailed matter(s) which the Board is asked to consider and the action(s) the Board is requested to take.

(5) All petitions must clearly and separately state the factual basis, reason, legal grounds, and public policy and technical justifications for each action requested of the Board. All available supporting documents, records, studies, and information bearing on the issue and available to the petitioner(s) must accompany the petition. The petition shall also contain or be accompanied by the names and addresses of all persons known to the petitioner(s) who are concerned with the subject matter of the petition.

(6) Petitions must be signed and endorsed by all petitioning parties, or their authorized legal representative(s); and such signature(s) and endorsement(s) must be duly attested to by a notary public.

(d) **Action on petitions.** All petitions shall be examined to determine whether the procedural requirements have been met and whether the facts, justifications and other submissions afford a reasonable basis for the requested declaratory ruling, other order, or other individual proceeding. Petitions found to be not in proper form or lacking the necessary reasonable basis for consideration by the Board will be returned to the submitter(s). Petitioner(s) will be notified whether and, if so, when the Board will consider a given petition. Action on accepted petitions will be considered by the Board at a regularly scheduled meeting or at a special meeting, as appropriate. If a petition for a declaratory ruling, other order, or other individual proceeding by the Board is accepted, the proposed action(s) shall thereafter be treated by the Board in full accordance with the Administrative Procedures Act. The Board may, in its discretion, refuse to make and issue a declaratory ruling or other order.

(e) **Costs associated with Individual proceedings.** If any party or parties in an individual proceeding before the Board desire and request stenographic or other recording of any hearing and the transcription into a written record of any such recording, the Board will make arrangements for such recording and transcription by a certified court reporter, upon written request for such action received by the Board not less than ten (10) days before the hearing date, and upon receipt of an appropriate cash deposit in an amount to be determined by the Chairman of the Board or by the State Director of Tests for Alcohol and Drug Influence. A copy of any resulting written record of such hearings(s) shall be provided to the Board at the expense of the party or parties requesting such written record.

(f) **Hearings.** All hearings required in connection with individual proceedings by this Board shall be conducted in accordance with ~~all applicable~~the provisions of the Oklahoma Administrative Procedures Act, and otherwise in accordance with procedures and practices determined or designated by the Board.

[OAR Docket #19-656; filed 6-25-19]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 10. PERSONNEL

[OAR Docket #19-657]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Breath-Alcohol Analysts
40:10-3-1 [AMENDED]
40:10-3-2 [REVOKED]
40:10-3-3 [AMENDED]
40:10-3-4 [REVOKED]
40:10-3-5 [AMENDED]
40:10-3-9 [REVOKED]
40:10-3-11 [REVOKED]
Subchapter 5. Breath Sample Collection Personnel
40:10-5-1 [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 5, 2018
COMMENT PERIOD:
January 3, 2019 through February 4, 2019
PUBLIC HEARING:
February 5, 2019
ADOPTION:
February 12, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 14, 2019
SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rules remove outdated references to "specialists". The rules incorporate federal and tribal law enforcement officers into the individuals eligible for a breath test operator permit. The rules eliminate certain eligibility requirements for the purpose of obtaining a breath test operator permit.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2019:

SUBCHAPTER 3. BREATH-ALCOHOL ANALYSTS

40:10-3-1. Qualifications and requirements for breath-alcohol operators (initial permits)

Qualifications and requirements for breath-alcohol operators (initial permits) are as follows:

(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, or the Board of Tests for Alcohol and Drug Influence. Employees of Federal or Tribal law enforcement agencies, tasked with conducting breath tests, may obtain a permit under the same conditions as employees of recognized Oklahoma law enforcement agencies, at the discretion of the Federal or Tribal law enforcement agency. Nothing in this rule requires the employees of Federal or Tribal law enforcement agencies to obtain a permit to conduct breath tests in support of Federal or Tribal enforcement.

~~(2) Minimum age of 21 years.~~

~~(3) Good moral character.~~

~~(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.~~

(~~5~~2) Satisfactory completion, within 1 year prior to application for an Operator permit, of a course of instruction in breath-alcohol analysis acceptable to the Board of Tests for Alcohol and Drug Influence.

(~~6~~3) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to operate Board approved breath test instrument(s).

40:10-3-2. Qualifications and requirements for breath-alcohol specialist (initial permit) [REVOKED]

~~Qualifications and requirements for breath-alcohol specialist (initial permits) are as follows:~~

~~(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, or the Board of Tests for Alcohol and Drug Influence.~~

~~(2) Minimum age of 21 years.~~

~~(3) Good moral character.~~

~~(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.~~

~~(5) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence.~~

~~(6) Satisfactory completion, within 1 year prior to application for a Specialist permit, of a course of instruction in breath-alcohol analysis specialist acceptable to the Board of Tests for Alcohol and Drug Influence.~~

~~(7) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform administrative maintenance on breath testing equipment.~~

40:10-3-3. Qualifications and requirements for breath-alcohol operators (renewal permits)

Qualifications for breath-alcohol operators (renewal permits) are as follows:

(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, or the Board of Tests for Alcohol and Drug Influence. Employees of Federal or Tribal law enforcement agencies, tasked with conducting breath tests, may obtain a permit under the same conditions as employees of recognized Oklahoma law enforcement agencies, at the discretion of the Federal or Tribal law enforcement agency. Nothing in this rule requires the employees of Federal or Tribal law enforcement agencies to obtain a permit to conduct breath tests in support of Federal or Tribal enforcement.

~~(2) Minimum age of 21 years~~

~~(3) Good moral character.~~

~~(4) Graduation from a state-accredited high school, or satisfactory passing of the 'General Education Development Test,' or equivalent education background.~~

(~~5~~2) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence.

(~~6~~3) Annual completion of a requalification or retraining course of instruction in breath alcohol analysis as applicable, consisting of such instruction as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence.

(~~7~~4) Annual establishment, to the satisfaction of the State Director of Tests for Alcohol and Drug Influence, of the applicant's competence to operate Board approved breath test instrument(s).

40:10-3-4. Qualifications and requirements for breath-alcohol specialist (renewal permits) [REVOKED]

~~Qualifications and requirements for breath-alcohol specialist (renewal permits) are as follows:~~

~~(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, or the Board of Tests for Alcohol and Drug Influence.~~

~~(2) Minimum age of 21 years.~~

~~(3) Good moral character.~~

~~(4) Graduation from a state accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.~~

~~(5) Satisfactory completion, within one (1) year prior to renewal of the Specialist Permit, a requalification or retraining course of instruction in breath alcohol analysis and breath alcohol analysis operation and administrative maintenance as applicable, consisting of such instruction as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence.~~

~~(7) Establishment, within one (1) year prior to renewal of the Specialist Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform administrative maintenance on breath testing equipment.~~

40:10-3-5. Reinstatement of expired breath-alcohol analysis permits

Persons who otherwise meet the qualifications and requirements for issuance of a renewal Breath-Alcohol Analysis Operator ~~or Breath Alcohol Analysis Specialist~~ Permit~~, respectively, but~~ whose initial or renewal Permit has expired because of failure satisfactorily to complete a timely requalification course of instruction acceptable to the State Director of Tests for Alcohol and Drug Influence may regain eligibility for active and valid Permit status, for good cause and in the discretion of this Board, by the following Permit Reinstatement procedure.

(1) Documentation that a valid Breath-Alcohol Analysis Operator ~~or Breath-Alcohol Analysis Specialist~~ Permit was issued to the applicant under authority of this Board, of the issue and expiration dates of said Permit, and that said Permit had not been revoked for cause.

(2) Completion of a designated application form for Permit Reinstatement, inclusive of all required information.

(3) Must be a qualified employee of a recognized Oklahoma law enforcement agency, whose duties include performance or training of Breath-Alcohol Analysis Testing.

(4) Satisfactory completion of a requalification or retraining course of instruction in breath-alcohol analysis operation ~~and/or breath alcohol analysis specialist as applicable,~~ consisting of such theoretical and practical instruction and laboratory practice as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence in consultation with the instructional staff.

(5) Establishment, by written and practical examination, to the satisfaction of the State Director of Tests for Alcohol and Drug Influence of the applicant's respective competence to perform, or to conduct administrative maintenance on breath-alcohol testing devices.

40:10-3-9. Qualifications and requirements for Independent breath-alcohol Specialist (initial permit) [REVOKED]

~~Qualifications and requirements for Independent breath-alcohol Specialist (initial permits) are as follows:~~

~~(1) Residence within State of Oklahoma at time of application.~~

~~(2) Minimum age of 21 years.~~

~~(3) Good moral character.~~

~~(4) Graduation from a state accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.~~

~~(5) Possession of a valid Independent Breath Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence.~~

~~(6) Satisfactory completion, within 1 year prior to application for a Specialist permit, of a course of instruction in independent breath alcohol analysis specialist acceptable to the State Director of Tests for Alcohol and Drug Influence and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs.~~

~~(7) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform administrative maintenance of chemical analysis of independent breath for alcohol.~~

40:10-3-11. Qualifications and requirements for Independent breath-alcohol Specialist (renewal permits) [REVOKED]

~~Qualifications and requirements for Independent breath-alcohol Specialist (renewal permits) are as follows:~~

~~(1) Residence within State of Oklahoma at time of application.~~

~~(2) Minimum age of 21 years.~~

~~(3) Good moral character.~~

~~(4) Graduation from a state accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.~~

~~(5) Possession of a valid Independent Breath Alcohol Analysis Specialist Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with~~

~~(A) the Qualifications and Requirements for Initial Issuance of such Permits then in force, or~~

~~(B) the Qualifications and Requirements for Renewal of such Permits then in force.~~

~~(6) Satisfactory completion within one (1) year prior to renewal of the Independent Specialist Permit, of a requalification course of instruction in breath alcohol analysis and administrative maintenance of breath alcohol devices acceptable to the State Director of Tests for Alcohol and Drug Influence.~~

~~(7) Establishment, within one (1) year prior to renewal of the Independent Specialist Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform and to the Administrative Maintenance of breath testing devices .~~

SUBCHAPTER 5. BREATH SAMPLE COLLECTION PERSONNEL

40:10-5-1. Qualifications for the collection of specimens of breath for determination of their alcohol concentration

Every individual possessing a valid unexpired permit, issued by the Board of Tests for Alcohol and Drug Influence, to perform tests for alcohol on specimens of breath as Breath-Alcohol Analysis Operator ~~or Specialist~~ is hereby declared to be qualified to collect specimens of breath from human subjects for the determination of the alcohol concentration thereof~~, by direct or delayed analysis~~. Every valid unexpired permit issued by this Board for the performance of tests for alcohol on specimens of breath shall be deemed, and is declared to be, a valid permit for the collection, by its holder, of specimens of breath from human subjects for the determination of the alcohol concentration thereof~~by direct or delayed analysis~~.

[OAR Docket #19-657; filed 6-25-19]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH

[OAR Docket #19-658]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:30-1-3 [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 5, 2018
COMMENT PERIOD:
January 3, 2019 through February 4, 2019
PUBLIC HEARING:
February 5, 2019
ADOPTION:
February 12, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 14, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The rules remove unnecessary language that was repeated in state statutes.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2019:

40:30-1-3. Breath-alcohol analysis with Board approved devices

(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein may be accomplished by any method, technique, or instrument approved by the Board in accordance with OAC 40: 25-1-2.

(b) **Operating procedure(s).** ~~Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.~~

~~(c)~~ ~~**Analysis.**~~ Each such analysis shall include the following steps:

(1) Determination that the subject's mouth has no presence of any substantial loose material(s), foreign substance(s), or any such substance(s). Metal, porcelain, or hard plastic items need not be removed.

(~~1~~2) Observation of the subject whose breath is to be tested sufficient to determine that, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, and continuing through the second breath specimen, the subject shall not have ingested alcohol in any form or any other substance, vomited, or smoked. Such observation shall be carried out by the breath-alcohol analysis Operator ~~or Specialist~~ or by any other qualified person.

(~~2~~3) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.

(~~3~~4) A blank analysis preceding analysis of each breath specimen.

(~~4~~5) Analysis ~~for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content in an alcoholic breath simulator device approved by the Board in accordance with OAC 40:25-1-3, or a nitrogen-ethanol dry gas reference method approved by the Board in accordance with OAC 40:25-1-3~~ of at least one control sample from a dry gas canister deployed by the agency in accordance with 40:25-1-3 to verify the calibration of the instrument at the time of the test. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters (± 0.01g/210L).

(~~5~~6) The operator performing each such analysis shall properly complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forward one (1) copy thereof to the Oklahoma Department of Public Safety, and to other agencies and persons listed on the form.

(~~d~~c) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath (± 0.03g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantiative. Results of analysis of all breath specimens shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such acceptable breath alcohol result obtained.

(~~e~~d) **Maintenance.** Maintenance shall be performed on the CMI 8000 Intoxilyzer, equipped with nitrogen-ethanol dry gas mixture, at such time as the regulator of the nitrogen-ethanol pressurized dry gas cannister fails to provide a gas sample for analysis or by the manufacturers stated expiration date, whichever occurs first. Such maintenance shall be performed by Board personnel, according to the procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence.

[OAR Docket #19-658; filed 6-25-19]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICES

[OAR Docket #19-659]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:50-1-2 [AMENDED]
40:50-1-2.4 [AMENDED]
40:50-1-3.1 [AMENDED]
40:50-1-3.2 [AMENDED]
40:50-1-5 [AMENDED]
40:50-1-8 [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 5, 2018
COMMENT PERIOD:
January 3, 2019 through February 4, 2019
PUBLIC HEARING:
February 5, 2019
ADOPTION:
February 12, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 14, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The rules remove unnecessary language that was repeated in state statutes.
CONTACT PERSON:
Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, kevin.behrens@bot.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2019:

40:50-1-2. Device certification process

(a) No device may be used in the state of Oklahoma unless it has been approved by the Board in accordance with the requirements stated herein.

(b) A list of approved device models shall be maintained by the Board and available for public review at the administrative office of the Board during regular business hours or by accessing the Board website at www.ok.gov/bot.

(c) A manufacturer representative seeking certification of a device shall:

(1) Complete an application for certification of an ignition interlock device and remit the appropriate fee in accordance with procedures established by the Board.

(2) Provide proof, as deemed appropriate by the Board, the device for which certification is being sought in Oklahoma meets or exceeds the current National Highway Traffic Safety Administration (NHTSA) specifications (78 FR 26849).

(3) Provide a certificate of insurance, issued by an insurance company authorized to transact business in Oklahoma, specifying:

(A) A product liability policy with a current effective date;

(B) The name and model number of the device model covered by the policy;

(C) Policy coverage of at least one million dollars ($1,000,000) per occurrence and three million ($3,000,000) in the aggregate;

(D) The manufacturer as the insured and the state of Oklahoma as an additional insured;

(E) Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the device; and

(F) The ~~insurance company~~manufacturer will notify the Board ~~at least 30 days before canceling~~ immediately upon notice of cancellation of the product liability policy.

(4) Devices shall use fuel cell technology for breath alcohol test or other alcohol-specific sensing technology approved by the Board en banc.

(5) Agree to ensure any service performed on a device installed pursuant to an Oklahoma Installation Authority shall be in compliance with all requirements in this title.

(6) Agree to ensure proper record keeping and provide testimony relating to any aspect of the installation, service,

repair, use, removal, interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by this title at no cost on behalf of the State of Oklahoma or any political subdivision.

(7) Advise the Board whether the device for which certification is being sought in Oklahoma is the subject of any action to disallow, or has ever been, in any way, disallowed for use in another state whether such action occurred before or after approval in Oklahoma and if or when such action is or has been appealed in the other state and the outcome of the appeal.

(8) Upon request of the Board, for each device submitted for certification or certified under this section, agree to install the device with all proposed anti circumvention features activated in a vehicle provided by the Board. Any service performed pursuant to this section, including but not limited to, installation, maintenance, calibration or removal shall be completed at no cost to the Board.

(d) The Board may conduct compliance testing on the device submitted for certification, at any time.

(e) Certification shall be for only one device. Separate certification is required for devices that differ in any operational aspect.

(f) Approved devices shall be recognizable, as such, upon visual inspection.

40:50-1-2.4. Modification of a certified device

(a) A manufacturer representative shall notify the Board ~~by accessing the Board website at http://ignitioninterlock.ok.gov~~ at least 15 days before implementation of any modification, upgrade or alteration to any hardware, software or firmware of a device certified for use in this state. Said notification shall include:

(1) A description and explanation of the modification, upgrade or alteration and satisfactory proof that these modifications, upgrades or alterations do not adversely affect the ability of the device to satisfy the requirements of this title, and

(2) A comprehensive plan of action for the phasing out of the use of the current device. This plan of action must be approved by the Board prior to the implementation of the plan of action.

(b) Any equipment in the possession of the Board that was retained pursuant to certification of the device shall be modified, upgraded or altered simultaneously with implementation.

(c) Material modifications to a certified device, as determined by the Board, may require certification pursuant to this title.

40:50-1-3.1. Violation reset

(a) A violation reset shall be activated by any of the following:

(1) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame.

(2) A circumvention.

(3) A retest violation.

(b) When a violation reset is activated, the device will initiate a unique audible and/or visual cue that will warn the driver that the device will enter a permanent lockout in five (5) days. This event will be uniquely recorded in the data storage system and will simultaneously start a countdown that culminates in the permanent lockout. A licensed ignition interlock technician shall remedy a permanent lockout in person. However, the Director may approve standards and procedures for an override lockout. For the purposes of this section, override lockout means a method of overriding a lockout condition by providing a breath sample indicating a negative result.

(c) Anytime a device is submitted pursuant to a violation reset the licensed ignition interlock technician shall perform a violation reset service consisting of, but not limited to:

(1) Performing a calibration confirmation test in accordance with this title, and

(2) Retrieving all data contained in the data storage system. Proper record maintenance shall be ensured as required in this title.

40:50-1-3.2. Reporting requirements

(a) Reportable violations are as follows:

(1) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame.

(2) A circumvention.

(3) Three (3) retest violations constitute a reportable violation. Each retest violation thereafter constitutes a reportable violation.

(4) Removal of the device except:

(A) Upon receipt of documentation from the Installation Authority or Monitor authorizing said removal.

(B) The vehicle is being repaired. The program participant must inform the licensed service center at least every eight (8) days as to the anticipated date of completion of repairs, or

(C) The vehicle is being replaced. In the event the vehicle is being replaced by another vehicle, the removal and reinstallation of the device in the subsequent vehicle must be accomplished within eight (8) days of the removal.

(5) Tampering.

(6) Missed service appointment, which shall be reported at the time the device enters, or should enter, permanent lockout.

(b) Reportable violations shall be reported to the Installation Authority and/or Monitor, in the form and/or format designated by the Board, within five business days, banking holidays excepted, after the violation reset service or removal of the device

(c) The manufacturer shall ensure proper record maintenance.

(d) The manufacturer shall report to the Board, in the form and format designated by the Board:

(1) Device installations

(2) Device removals

(3) Any reportable violations

(4) Vehicle transfers

(5) Device changes

(6) Program length change

40:50-1-5. Maintenance and calibration

(a) The maintenance and calibration of a device shall be completed according to the following guidelines:

(1) The device shall enter a permanent lockout if the device has not been checked for calibration accuracy within sixty-five (65) days subsequent to the last check for calibration accuracy.

(2) The maintenance and calibration of the device shall only be performed by ignition interlock technicians duly licensed by the Board who shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred.

(3) The maintenance and calibration will consist of, but not be limited to, a check of the device to determine:

(A) The device is configured to the specifications required in this title.

(B) The anti circumvention features are activated and properly functioning.

(C) The device is in calibration.

(i) The device shall be subjected to a calibration confirmation test. This test shall consist of introducing a sample from a calibration standard approved by these rules into the device~~to a reference sample device with a stated alcohol concentration~~.

(I) Calibration standard(s) shall be within plus or minus (+/-) 0.005 g/210L of the stated alcohol concentration.

(II) ~~A list of approved reference sample devices may be obtained at the administrative office of the Board or by accessing the Board website at www.ok.gov/bot.~~ Only dry gas calibration standards appearing on the *Conforming Products List of Calibrating Units for Breath Alcohol Testers* (77 FR 64588) published by the National Highway Traffic Safety Administration may be employed in the maintenance and calibration of the ignition interlock device.

(III) ~~Reference sample devices~~Calibration standards shall be operated in accordance with the ~~manufacturers~~manufacturer's recommendations, unless modified by the Board or its designee, and shall be maintained in proper working order. This includes, but is not limited to, any required altitude adjustment.

~~(IV) Calibration solution(s) must be stored in such a manner that they are not exposed to excessive heat or cold which may compromise the integrity of the calibration solution.~~

(~~V~~IV) Preparatory documentation (such as a certificate of analysis) stating the alcohol concentration on the calibration gas standard must be available for inspection while the gas standard is being utilized.

~~(VI) Empty calibration solution containers, displaying the stated alcohol concentration and lot number, must be available for inspection while the calibration solution from that container is being utilized~~

(ii) The calibration confirmation test shall verify the accuracy of the ignition interlock device to be within plus or minus (±) 0.01 g/210L of the stated alcohol concentration, unless modified by the Board en banc.

(iii) Should the ignition interlock device fail the calibration confirmation test:

(I) The ignition interlock device shall be recalibrated so as to restore accuracy before the device may be placed into service.

(II) That information shall be provided to the Board or its designee and/or the Installation Authority and/or the monitor upon request.

(iv) If the device fails to meet the requirements in this section, the device shall be removed from service and simultaneously replaced with a device that successfully meets the requirements in this section. All data contained in the data storage of the device being replaced shall be retrieved upon replacement. Records may be maintained electronically.

(b) The manufacturer's software utilized in a licensed service center by the licensed ignition interlock technician shall be capable of performing, documenting and reporting the result of this calibration confirmation test. All data contained in the data storage system shall be retrieved anytime the device is submitted to maintenance and calibration. Records may be maintained electronically. Upon completion of maintenance and calibration of the device, the licensed ignition interlock technician shall provide the participant a report showing the maintenance and calibration of the device.

40:50-1-8. Ignition interlock technician

(a) No person may perform any service(s) related to any device in this state ~~or located within the inclusion zone~~ without being duly licensed by the Board.

(b) An applicant who has been convicted of, or plead guilty or *nolo contendere*, to an alcohol related traffic offense or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for licensure as an ignition interlock technician may not be eligible for licensure. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(c) An applicant must be at least eighteen (18) years of age.

(d) An applicant must possess a valid driver license.

(e) A vendor seeking licensure for an ignition interlock technician shall initiate an ignition interlock technician license application and remit the appropriate fee by accessing the Board website at www.ok.gov/bot.

(f) The applicant shall:

(1) Complete the ignition interlock technician license application.

(2) Complete and score an 80% or higher on a knowledge and skills examination administered by the Board.

(3) Submit a criminal history report certified within the immediately preceding thirty (30) days from either

the Oklahoma State Bureau of Investigation or, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.

(g) Each application for licensure shall be for a single ignition interlock technician. Separate ignition interlock technician applications are required for additional ignition interlock technicians.

(h) The technician must utilize the ignition interlock management system for issuing, updating, and removing the installation verification form for any participant provided device related services.

[OAR Docket #19-659; filed 6-25-19]

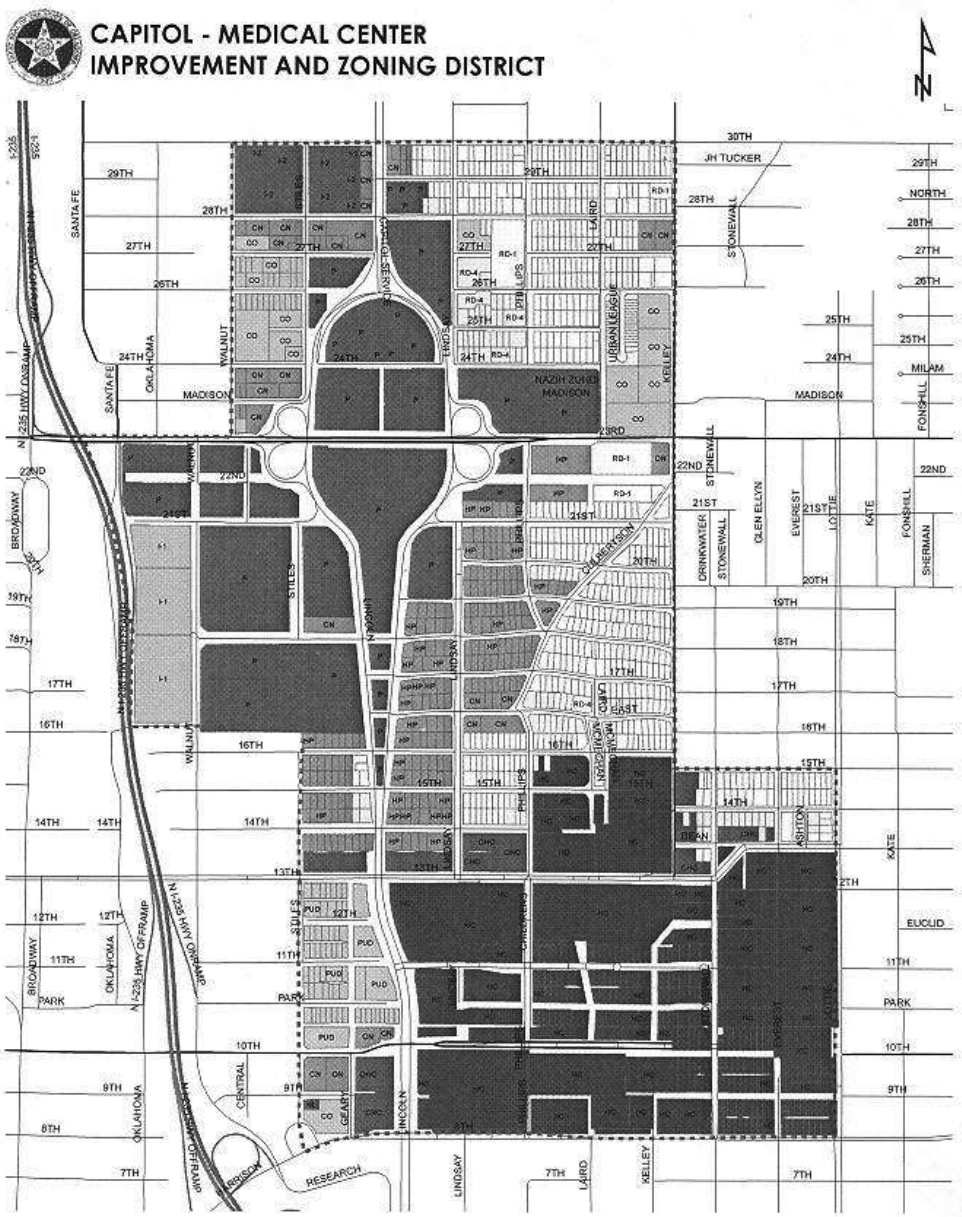
TITLE 120. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION
CHAPTER 10. ZONING REGULATIONS FOR CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICT

[OAR Docket #19-650]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix A.1. Capitol-Medical Center Improvement and Zoning Districts Map [REVOKED]
Appendix A. Capitol-Medical Center Improvement and Zoning Districts Map [NEW]
AUTHORITY:
73 O.S. §83.4; Capitol-Medical Center Improvement and Zoning Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2018
COMMENT PERIOD:
December 17, 2018 through January 25, 2019
PUBLIC HEARING:
January 24, 2019
ADOPTION:
March 29, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Appendix A.1. Capitol-Medical Center Improvement and Zoning Districts Map [REVOKED]
Appendix A. Capitol-Medical Center Improvement and Zoning Districts Map [NEW]
Gubernatorial Approval:
June 7, 2018
Register publication:
35 OK Reg 647
Docket number:
18-374
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
This rule is necessary to supersede an emergency rule that is set to expire on September 15, 2019, and make the Capitol-Medical Zoning Commission map in Appendix A consistent with the map that was adopted by the Commission April 27, 2018.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

APPENDIX A.1. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICTS MAP [REVOKED]



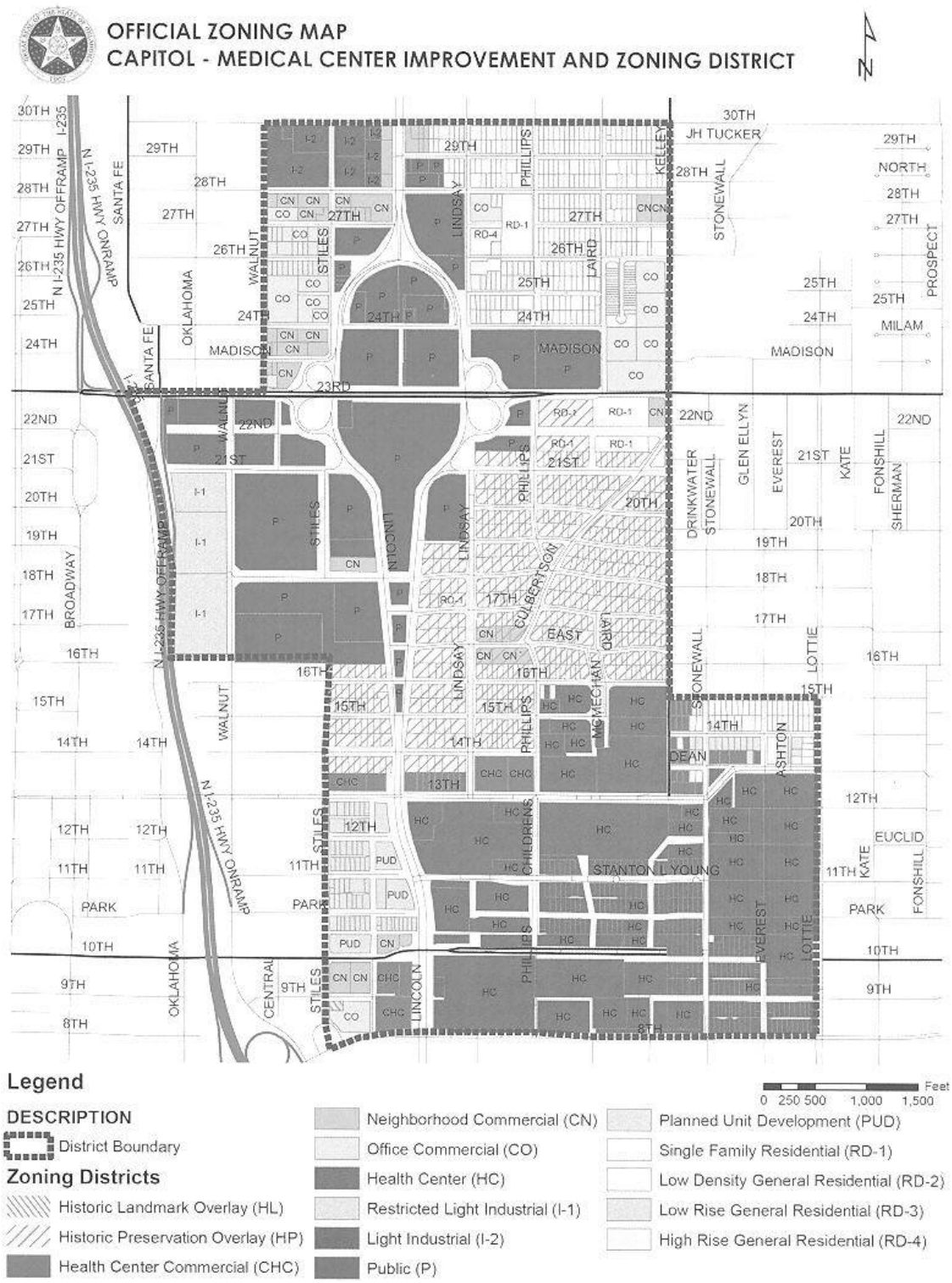
Legend

CMCIZD Boundary

Zoning Districts

- Health Center Commercial (CHC)
- Neighborhood Commercial (CN)
- Office Commercial (CO)
- Health Center (HC)
- Historic Landmark (HL)
- Historic Preservation (HP)
- Restricted Light Industrial (I-1)
- Light Industrial (I-2)
- Public (P)
- Planned Unit Development (PUD)
- Single Family Residential (RD-1)
- Low Density General Residential (RD-2)
- Low Rise General Residential (RD-3)
- High Rise General Residential (RD-4)

APPENDIX A. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICTS MAP [NEW]



[OAR Docket #19-650; filed 6-21-19]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #19-687]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 21. Child Death Review Board
135:10-21-2 [AMENDED]
AUTHORITY:
Oklahoma Commission on Children and Youth; 10 O.S. § 601.4(9): 10 O.S. § 1150.2(A)(5)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2019
COMMENT PERIOD:
February 15, 2019 to March 18, 2019
PUBLIC HEARING:
March 18, 2019
ADOPTION:
March 29, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE
n/a
GIST/ANALYSIS:
The adopted rule changes the required membership of a local child death review team by expanding the pool of eligible members. Under the prior rule, the District Attorney in the geographical region the team serves was required to be a member. Under the adopted rule, the membership requirement is expanded to include either the D.A. or an Assistant D.A. Also, under the prior rule, the team was required to include a member of the Oklahoma Psychological Association. Under the adopted rule, the membership requirement is met by appointment of a licensed mental health professional.
CONTACT PERSON:
Lisa Rhoades, Oklahoma Commission on Children and Youth, at (405) 606-4900; Lisa.Rhoades@occy.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 21. CHILD DEATH REVIEW BOARD

135:10-21-2. Local Child Death Review Teams

(a) The Child Death Review Board may establish and enter into agreements with local child death review teams pursuant to 10 O.S. 1150.2(A)(5). The local teams shall carry out such duties and responsibilities as the Board shall designate, including reviewing cases in the geographical area where the team is located.

(b) Members of a team shall be appointed by the Executive Director of the Oklahoma Commission on Children and Youth (OCCY) upon recommendation by the Board and shall include, at a minimum, the following: a medical professional, a District Attorney or Assistant District Attorney, a law enforcement investigator, an OKDHS Child Welfare employee, and a ~~member of the Oklahoma Psychological Association~~licensed mental health professional.

(c) Each team member shall serve a term of two years and may be reappointed to an unlimited number of terms. Each member may appoint a designee to attend team meetings in the members absence. However, each member shall personally attend at least seventy-five percent of all meetings in a given calendar year. If a member fails to attend at least seventy-five percent of all meetings in a given year, the position shall be vacated and the OCCY Executive Director shall make an appointment filling the position for the remainder of the term.

(d) The teams shall meet no less than quarterly in a given calendar year.

(e) The team shall send at least one member, other than a designee, to report annually to the Board for the purpose of assessing the progress and of the team. If a team is deemed to be non-functioning the Board may dismantle it and establish a new team whose new members shall be appointed in the same manner as provided for in subsection (b) above.

(f) The teams shall conduct case reviews of the deaths and near deaths of children due to abuse or neglect which occur in the geographical region designated by the Board The teams shall use the same review resources as the Board- All records obtained or created by a local team shall be records of the Board and subject to the confidentiality and privilege provisions of the Board's enabling act

(g) Each team shall perform all duties and abide by all conditions as provided for in each agreement between the team and the Board.

[OAR Docket #19-687; filed 6-27-19]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #19-688]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 28. Children's Endowment Fund of Oklahoma [NEW]
135:10-28-1 [NEW]
135:10-28-3 [NEW]
135:10-28-5 [NEW]
135:10-28-7 [NEW]
AUTHORITY:
Oklahoma Commission on Children and Youth; 10 O.S. § 601.4(9): 10 O.S. § 601.14

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2019
COMMENT PERIOD:
February 15, 2019 to March 18, 2019
PUBLIC HEARING:
March 18, 2019
ADOPTION:
March 29, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE
n/a
GIST/ANALYSIS:
The new rules establish the procedure by which the Oklahoma Commission on Children and Youth shall administer the Children's Endowment Fund of Oklahoma for the purpose of awarding grants to stimulate a broad range of innovative programs, activities, research or evaluation to improve the well-being and reduce the adverse childhood experiences of Oklahoma's children pursuant to Oklahoma Session Laws 2018, c. 231, §1, codified at 10 O.S. §601.14. The adopted rules create the Parent Partnership Board to serve in an advisory capacity to the Commission. The adopted rules also set out the duties of the Executive Director of the Commission as well as the process for awarding grants.
CONTACT PERSON:
Mark James, Oklahoma Commission on Children and Youth, at (405) 606-4900; Mark.James@occy.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 28. CHILDREN'S ENDOWMENT FUND OF OKLAHOMA

135:10-28-1. Origin, authority and purpose

The purpose of this subchapter is to implement Section 601.14 of Title 10 of the Oklahoma Statutes which creates the Children's Endowment Fund of Oklahoma. The Oklahoma Commission on Children and Youth has the authority and duty to administer the Fund for the purpose of awarding grants to stimulate a broad range of innovative programs, activities, research or evaluation to improve the well-being and reduce the adverse childhood experiences of Oklahoma's children.

135:10-28-3. Parent Partnership Board

(a) The Commission shall appoint members to the Parent Partnership Board which shall serve in an advisory capacity to the Commission, Commission staff, and, upon request, other child-serving agencies.
(b) The Board shall have no fewer than five (5) members and no more than thirteen (13) members.
(c) The Commission may develop an application and selection process to select the members of the board.
(d) Board members shall be parents who have direct knowledge and experience in caring for children. Membership shall include, but not be limited to parents who have children:
(1) with special needs;
(2) who have been impacted by Oklahoma's criminal or juvenile justice system including deprived actions;
(3) who have been in the custody of, or who have received services from, the Oklahoma Department of Human Services, Office of Juvenile Affairs, Oklahoma State Department of Health or other child-serving entity including nonprofits; or
(4) who have received services including, but not limited to, home visiting, local county health department child guidance services, parenting support groups or education classes, TANF, SNAP, WIC, and Soonercare.
(e) The Commission may seek assistance from a national organization with expertise in parent leadership and the development of parent participatory boards in selecting, training, and engaging Board members.
(f) Half of the members appointed shall serve a term of one-year and may be reappointed to two subsequent terms of two years each. Half of the members shall be appointed to a term of two years and may be appointed to an additional term of two years. The terms shall begin with each fiscal year. A person who is appointed to fill the remainder of a vacated term shall serve the remainder of the term and be eligible for two subsequent terms of two years each. Members shall serve at the pleasure of the Commission and may be removed at any time.
(g) The Board shall:
(1) inform the work of Oklahoma's child-serving systems with regard to a broad range of innovative programs, activities, research or evaluation to improve the well-being and reduce the adverse childhood experiences of Oklahoma's children;
(2) recommend grant topics;
(3) develop and evaluate grant proposals;
(4) recommend to the Commission criteria and procedures for awarding grants; and
(5) review and make editing suggestions for the Oklahoma Children's Endowment Fund Requests for Proposals (RFPs);

135:10-28-5. Duties of Executive Director

(a) The Commission Executive Director may delegate any of the following duties to Commission Staff to assist the Executive Director in performing tasks under this section.
(b) The Executive Director may:
(1) participate with national entities that train and support staff in developing skills to create parent leaders;
(2) develop an application process for the Parent Partnership Board that seeks to recruit a diverse set of parents with varying life experiences that have caused them to interact with child-serving systems;
(3) work with outside entities with expertise in parent boards to possibly assist with recommendations for the

Parent Partnership Board's member selection and create a parent manual;

(4) provide staff support for in-person and phone meetings including such activities as creating meeting agendas, securing presenters, organizing trainings, and providing travel claim assistance;

(5) make recommendations to the Commissioners for potential grant-making subject matters;

(6) develop Requests for Proposals, with input from the Commissioners and the Parent Partnership Board, so that local entities, governmental agencies, and/or academic institutions may apply for the Oklahoma Children's Endowment Fund Grants;

(7) develop a standardized scoring tool for scoring the Requests for Proposals and utilize a scoring panel to score and rank submitted proposals;

(8) present the scores and rankings to the Commissioners with recommendations for funding;

(9) award contracts/grants to those with approval from the Commissioners;

(10) provide appropriate contract monitoring for those with the successful proposals;

(11) provide technical assistance and support to grantees;

(12) review invoices for appropriateness and assure invoices are paid;

(13) assure that applicable demographic, process and outcomes data is collected and provided to OCCY in order to show program effectiveness; and

(14) take any other action necessary to ensure the orderly execution of the grant process.

135:10-28-7. Grant Award Process

Should earnings from the Oklahoma Children's Endowment Trust be equal to $10,000 or more in a given year, such earnings may be moved into an OCCY revolving fund for the purpose of awarding grants as described in Title 10 O.S. §601.14. Grant funds shall be distributed in the following manner.

(1) The OCCY staff shall request suggestions for grant subject matters from the PPB.

(2) The OCCY staff may also research and propose grant subject matters.

(3) The OCCY staff shall present the afore-mentioned grant subject matters for approval to the Commission. Should the Commission deem it financially feasible, the Commission may approve one or more subject matters that can be developed into Requests for Proposals (RFPs) and awarded through the grant process.

(4) All grant awards will be made through a competitive RFP process.

(5) The OCCY staff shall develop a standardized score tool that shall be utilized by a review panel to evaluate, score and rank all RFPs.

(6) The Commission Chair shall appoint a review panel consisting of one member of the Parent Partnership Board, one OCCY Commissioner, one OCCY staff and relevant content experts as the Chair deems necessary and appropriate.

(7) Awards will be made and grants/contracts are to be in place by July 1 of each year.

(8) Renewal clauses may be included in the contract of awards, but are subject to the availability of funds.

[OAR Docket #19-688; filed 6-27-19]

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

[OAR Docket #19-724]

RULEMAKING ACTION:

PERMANENT final adoption of subject matter standards pursuant to 70 O.S. § 11-103.6a-1

RULES:

Subchapter 3. Oklahoma Academic Standards
Part 27. Computer Science [NEW]
210:15-3-200. Computer Science standards: overview [NEW]
210:15-3-200.5. Computer Science standards for kindergarten [NEW]
210:15-3-201. Computer Science standards for first grade [NEW]
210:15-3-202. Computer Science standards for second grade [NEW]
210:15-3-203. Computer Science standards for third grade [NEW]
210:15-3-204. Computer Science standards for fourth grade [NEW]
210:15-3-205. Computer Science standards for fifth grade [NEW]
210:15-3-206. Computer Science standards for sixth grade [NEW]
210:15-3-207. Computer Science standards for seventh grade [NEW]
210:15-3-208. Computer Science standards for eighth grade [NEW]
210:15-3-209. Computer Science standards for high school [NEW]

AUTHORITY:

70 O.S. § 3-104; 70 O.S. § 11-103.6a; 70 O.S. § 11-103.6a-1

ADOPTION:

March 8, 2018

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 20, 2018

LEGISLATIVE APPROVAL:

The Computer Science standards were approved in Senate Joint Resolution 72 on May 3, 2018.

EFFECTIVE:

September 13, 2019

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Academic Standards for Computer Science set forth the subject matter standards that apply to computer science courses in Oklahoma public schools. Pursuant to 70 O.S. § 11-103.6a and 70 O.S. § 11-103.6a-1, subject matter standards must be reviewed and approved by the State Board of Education, then submitted to the Oklahoma Legislature for final approval or disapproval. The Computer Science standards were approved by the State Board of Education and subsequently approved by the Legislature in SJR 72. The standards for each grade level are organized around five main concepts in computer science: computing systems; networks and the internet; data analysis; algorithms and programming; and impacts of computing.

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 117, Oliver Hodge Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING SUBJECT MATTER STANDARDS ARE EFFECTIVE AS OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. OKLAHOMA ACADEMIC STANDARDS

PART 27. COMPUTER SCIENCE

210:15-3-200. Computer Science standards: overview

The Oklahoma Academic Standards for Computer Science are organized around five main concepts, each broken down into two or more sub-concepts. For each grade level, the standards for Computer Science are arranged under the following main concepts:

(1) Computing Systems
(2) Networks and the Internet
(3) Data Analysis
(4) Algorithms and Programming
(5) Impacts of Computing

210:15-3-200.5. Computer Science standards for kindergarten

(a) **Computing Systems.**

(1) **Devices.** With guidance, follow directions and start to make appropriate choices to use computing devices to perform a variety of tasks.

(2) **Hardware and Software.** Use appropriate terminology to locate and identify common computing devices and components, in a variety of environments (e.g., desktop computer, laptop computer, tablet device, monitor, keyboard, mouse, printer).

(3) **Troubleshooting.** Recognize that computing systems might not work as expected, and with guidance use accurate terminology to identify simple hardware or software problems (e.g., volume turned down on headphones, monitor turned off).

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Recognize that computing devices can be connected together.

(2) **Cybersecurity.** Discuss what passwords are and why we do not share them with others. With guidance, use passwords to access technological devices, apps, etc.

(c) **Data Analysis.**

(1) **Storage.** With guidance, locate, open, modify, and save an existing file with a computing device.

(2) **Collection, Visualization, and Transformation.** With guidance, collect data and present it visually.

(3) **Inference and Models.** With guidance, draw conclusions and make predictions based on picture graphs or patterns (e.g., make predictions based on weather data presented in a picture graph or complete a pattern).

(d) **Algorithms and Programming.**

(1) **Algorithms.** With guidance, model daily processes and follow algorithms (sets of step-by-step instructions) to complete tasks verbally, kinesthetically, with robot devices, or a programming language.

(2) **Variables.** With guidance, recognize that computers represent different types of data using numbers or other symbols.

(3) **Control.** With guidance, independently or collaboratively create programs to accomplish tasks using a programming language, robot device, or unplugged activity that includes sequencing (i.e., emphasizing the beginning, middle, and end).

(4) **Program Development.**

(A) With guidance, create a grade-level appropriate artifact to illustrate thoughts, ideas, or stories in a sequential (step-by-step) manner (e.g., story map, storyboard, and sequential graphic organizer).

(B) Independently or with guidance, give credit to ideas, creations, and solutions of others while developing algorithms.

(C) With guidance, independently or collaboratively debug algorithms using a programming language and/or unplugged activity that includes sequencing.

(D) Use correct terminology (beginning, middle, end) in the development of an algorithm to solve a simple problem.

(e) **Impacts of Computing.**

(1) **Culture.** List different ways in which types of technologies are used in your daily life.

(2) **Social Interactions.** With guidance, identify appropriate manners while participating in an online environment.

210:15-3-201. Computer Science standards for first grade

(a) **Computing Systems.**

(1) **Devices.** With guidance, select and use a computing device to perform a variety of tasks for an intended outcome.

(2) **Hardware and Software.** Use appropriate terminology in naming and describing the function of common computing devices and components (e.g., mouse is used to control the cursor).

(3) **Troubleshooting.** Identify, using accurate terminology, simple hardware and software problems that may occur during use (e.g., app or program is not working as expected, no sound is coming from the device, caps lock turned on).

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Recognize that by connecting computing devices together they can share information (e.g., remote storage, printing, the internet).

(2) **Cybersecurity.** Identify what passwords are, explain why they are not shared, and discuss what makes a password strong. Independently, use passwords to access technological devices, apps, etc.

(c) **Data Analysis.**

(1) **Storage.** With guidance, locate, open, modify, and save an existing file, use appropriate file-naming conventions, and recognize that the file exists within an organizational structure (drive, folder, file).

(2) **Collection, Visualization, and Transformation.** With guidance, collect data and present it in two different ways.

(3) **Inference and Models.** With guidance, identify and interpret data from a chart or graph (visualization) in order to make a prediction, with or without a computing device.

(d) **Algorithms and Programming.**

(1) **Algorithms.** With guidance, model daily processes and follow algorithms (sets of step-by-step instructions) to complete tasks verbally, kinesthetically, with robot devices, or a programming language.

(2) **Variables.** With guidance, model the way that a program accesses stored data using a variable name.

(3) **Control.** With guidance, independently or collaboratively create programs to accomplish tasks using a programming language, robot device, or unplugged activity that includes sequencing and repetition.

(4) **Program Development.**

(A) Independently or with guidance, create a grade-level appropriate artifact to illustrate thoughts, ideas, or stories in a sequential (step-by-step) manner (e.g., story map, storyboard, and sequential graphic organizer).

(B) Independently or with guidance, give credit to ideas, creations, and solutions of others while writing and/or developing programs.

(C) With guidance, independently or collaboratively debug programs using a programming language and/or unplugged activity that includes sequencing and repetition.

(D) Use correct terminology (first, second, third) and explain the choices made in the development of an algorithm to solve a simple problem.

(e) **Impacts of Computing.**

(1) **Culture.** Identify how people use different types of technologies in their daily work and personal lives.

(2) **Social Interactions.** With guidance, identify appropriate and inappropriate behavior. Act responsibly while participating in an online community and know how to report concerns.

210:15-3-202. Computer Science standard for second grade

(a) **Computing Systems.**

(1) **Devices.** Select and use a computing device to perform a variety of tasks for an intended outcome.

(2) **Hardware and Software.** Identify the components of a computer system and what the basic functions are (e.g., hard drive and memory) as well as peripherals (e.g., printers, scanners, external hard drives) and external storage features and their uses (e.g., cloud storage).

(3) **Troubleshooting.** Identify, using accurate terminology, simple hardware and software problems that may occur during use (e.g., app or program is not working as expected, no sound is coming from the device, caps lock turned on) and discuss problems with peers and adults.

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Recognize that computing devices can be connected at various scales (e.g., Bluetooth, WiFi, www, LAN, WAN, peer-to-peer).

(2) **Cybersecurity.** Explain what passwords are and why we use them; use strong passwords to protect devices and information from unauthorized access.

(c) **Data Analysis.**

(1) **Storage.** With guidance, develop and modify an organizational structure by creating, copying, moving, and deleting files and folders.

(2) **Collection, Visualization, and Transformation.** With guidance, collect and present the same data in various visual formats.

(3) **Inference and Models.** With guidance, construct and interpret data and present it in a chart or graph (visualization) in order to make a prediction, with or without a computing device.

(d) **Algorithms and Programming.**

(1) **Algorithms.** With guidance, model daily processes by creating and following algorithms (sets of step-by-step instructions) to complete tasks verbally, kinesthetically, with robot devices, or a programming language.

(2) **Variables.** Model the way a computer program stores, accesses, and manipulates data that is represented as a variable.

(3) **Control.** With guidance, independently and collaboratively create programs to accomplish tasks using a programming language, robot device, or unplugged activity that includes sequencing and repetition.

(4) **Program Development.**

(A) Independently or with guidance, create a grade-level appropriate artifact to illustrate thoughts, ideas, or stories in a sequential (step-by-step) manner (e.g., story map, storyboard, and sequential graphic organizer).

(B) Give credit to ideas, creations, and solutions of others while writing and developing programs.

(C) With guidance, independently and collaboratively debug programs using a programming language and/or unplugged activity that includes sequencing and repetition.

(D) Use correct terminology (debut, program input/output, code) to explain the development of an algorithm to solve a problem in an unplugged activity, hands on manipulatives, or a programming language.

(e) **Impacts of Computing.**

(1) **Culture.** Identify and describe how people use different types of technologies in their daily work and personal lives.

(2) **Social Interactions.** Develop a code of conduct, explain, and practice grade-level appropriate behavior and responsibilities while participating in an online community. Identify and report inappropriate behavior.

210:15-3-203. Computer Science standards for third grade

(a) **Computing Systems.**

(1) **Hardware and Software.** Model how information flows through hardware and software to accomplish tasks.

(2) **Troubleshooting.** Identify, using accurate terminology, simple hardware and software problems that may occur during everyday use; discuss problems with peers and adults; and apply strategies for solving these problems (e.g., refreshing the screen, closing and reopening an application or file, unmuting or adjusting the volume on headphones).

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Recognize that information is sent and received over physical or wireless paths.

(2) **Cybersecurity.** Identify problems that relate to inappropriate use of computing devices and networks.

(c) **Data Analysis.**

(1) **Storage.** Recognize that different types of information are stored in different formats that have associated programs (e.g., documents open in a word processor) and varied storage requirements.

(2) **Collection, Visualization, and Transformation.** Collect and organize data in various visual formats.

(3) **Inference and Models.** With guidance, utilize data to make predictions and discuss whether there is adequate data to make reliable predictions.

(d) **Algorithms and Programming.**

(1) **Algorithms.** Compare multiple algorithms for the same task.

(2) **Variables.** Create programs that use variables to store and modify grade-level appropriate data.

(3) **Control.** Create programs using a programming language that utilize sequencing, repetition, conditionals, and variables to solve a problem or express ideas, both independently and collaboratively.

(4) **Modularity.**

(A) Decompose (break down) the steps needed to solve a problem into a precise sequence of instructions.

(B) With grade appropriate complexity, modify, remix, or incorporate portions of an existing program into one's own work, to develop something new or add more advanced features.

(5) **Program Development.**

(A) Use an iterative process to plan the development of a program while solving simple problems.

(B) Observe intellectual property rights and give appropriate credit when creating or remixing programs.

(C) Analyze and debug a program that includes sequencing, repetition, and variables in a programming language.

(D) Communicate and explain your program development using comments, presentations, and demonstrations.

(e) **Impacts of Computing.**

(1) **Culture.**

(A) Identify computing technologies that have changed the world, and express how those technologies influence, and are influenced by, cultural practices.

(B) Identify possible problems and how computing devices have built in features for increasing accessibility to all users.

(2) **Social Interactions.**

(A) Develop a code of conduct, explain, and practice grade-level appropriate behavior and responsibilities while participating in an online community. Identify and report inappropriate behavior.

(B) Identify how computational products may be, or have been, improved to incorporate diverse perspectives.

(3) **Safety, Law, and Ethics.** Identify types of digital data that may have intellectual property rights that prevent copying or require attribution.

210:15-3-204. Computer Science standards for fourth grade

(a) **Computing Systems.**

(1) **Hardware and Software.** Model that information is translated, transmitted, and processed in order to flow through hardware and software.

(2) **Troubleshooting.** Identify, using accurate terminology, simple hardware and software problems that may occur during everyday use; discuss problems with peers and adults; and apply strategies for solving these problems (e.g., rebooting the device, checking the power, force shut down of an application).

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Explain how information is sent and received across physical or wireless paths. (It is broken down into smaller pieces called packets and transmitted from one location to another.)

(2) **Cybersecurity.** Identify and explain issues related to responsible use of technology and information, and describe personal consequences of inappropriate use.

(c) **Data Analysis.**

(1) **Storage.** Choose different storage locations (physical, shared, or cloud) based on the type of file, storage requirements (file size, availability, available memory), and sharing requirements.

(2) **Collection, Visualization, and Transformation.** Organize and present collected data visually to highlight comparisons.

(3) **Inference and Models.** Determine how the accuracy of conclusions are influenced by the amount of data collected.

(d) **Algorithms and Programming.**

(1) **Algorithms.** Compare and refine multiple algorithms for the same task.

(2) **Variables.** Create programs that use variables to store and modify grade level appropriate data.

(3) **Control.** Create programs using a programming language that utilize sequencing, repetition, conditionals, and variables; using math operations manipulate variables to solve a problem or express ideas, both independently and collaboratively.

(4) **Modularity.**

(A) Decompose (break down) large problems into smaller, manageable subproblems to facilitate the program development process.

(B) With grade appropriate complexity, modify, remix, or incorporate portions of an existing program into one's own work, to develop something new or add more advanced features.

(5) **Program Development.**

(A) Use an iterative process to plan the development of a program that includes user preferences while solving simple problems.

(B) Observe intellectual property rights and give appropriate credit when creating or remixing programs.

(C) Analyze, create, and debug a program that includes sequencing, repetition, conditionals, and variables in a programming language.

(D) Communicate and explain your program development using comments, presentations, and demonstrations.

(e) **Impacts of Computing.**

(1) **Culture.**

(A) Give examples of computing technologies that have changed the world, and express how those technologies influence, and are influenced by, cultural practices.

(B) Brainstorm problems and ways to improve computing devices to increase accessibility to all users.

(2) **Social Interactions.**

(A) Develop a code of conduct, explain, and practice grade-level appropriate behavior and responsibilities while participating in an online community. Identify and report inappropriate behavior.

(B) As a team, consider each other's perspectives on improving a computational product.

(3) **Safety, Law, and Ethics.** Discuss the social impact of violating intellectual property rights.

210:15-3-205. Computer Science standards for fifth grade

(a) **Computing Systems.**

(1) **Hardware and Software.** Model that information is translated into bits in order to transmit and process between software to accomplish tasks.

(2) **Troubleshooting.** Identify, using accurate terminology, simple hardware and software problems that may occur during everyday use. Discuss problems with peers and adults, apply strategies for solving these problems, and explain why the strategy should work.

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Model how information is broken down into packets (smaller pieces) and transmitted through multiple devices over networks and the Internet, and reassembled at the destination.

(2) **Cybersecurity.** Discuss real-world cybersecurity problems and identify strategies for how personal information can be protected.

(c) **Data Analysis.**

(1) **Storage.** Evaluate trade-offs, including availability and quality, based on the type of file, storage requirements (file size, availability, available memory), and sharing requirements.

(2) **Collection, Visualization, and Transformation.** Organize and present collected data to highlight comparisons and support a claim.

(3) **Inference and Models.** Use data to highlight or propose cause and effect relationships, predict outcomes, or communicate an idea.

(d) **Algorithms and Programming.**

(1) **Algorithms.** Compare and refine multiple algorithms for the same task and determine which is most efficient.

(2) **Variables.** Create programs that use variables to store and modify grade level appropriate data.

(3) **Control.** Create programs using a programming language that utilize sequencing, repetition, conditionals, event handlers, and variables using math operations to manipulate values to solve a problem or express ideas, both independently and collaboratively.

(4) **Modularity.**

(A) Decompose (break down) large problems into smaller, manageable subproblems and then into a precise sequence of instructions.

(B) With grade appropriate complexity, modify, remix, or incorporate portions of an existing program into one's own work, to develop something new or add more advanced features.

(5) **Program Development.**

(A) Use an iterative process to plan the development of a program that includes others' perspectives and user preferences while solving simple problems.

(B) Observe intellectual property rights and give appropriate credit when creating or remixing programs.

(C) Analyze, create, and debug a program that includes sequencing, repetition, conditionals, and variables in a programming language.

(D) Communicate and explain your program development using comments, presentations, and demonstrations.

(e) **Impacts of Computing.**

(1) **Culture.**

(A) Give examples and explain how computing technologies have changed the world, and express how computing technologies influence, and are influenced by, cultural practices.

(B) Develop, test, and refine digital artifacts to improve accessibility and usability.

(2) **Social Interactions.**

(A) Develop a code of conduct, explain, and practice grade-level appropriate behavior and responsibilities while participating in an online community. Identify and report inappropriate behavior.

(B) As a team, collaborate with outside resources (other grade levels, online collaborative spaces) to include diverse perspectives to improve computational products.

(3) **Safety, Law, and Ethics.** Observe intellectual property rights and give appropriate credit when using resources.

210:15-3-206. Computer Science standards for sixth grade

(a) **Computing Systems.**

(1) **Devices.** Evaluate existing computing devices and recommend improvements to design based on analysis of personal interaction with the device.

(2) **Hardware and Software.** Identify ways that hardware and software are combined to collect and exchange data.

(3) **Troubleshooting.** Identify increasingly complex software and hardware problems with computing devices and their components.

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Model a simple protocol for transferring information using packets.

(2) **Cybersecurity.**

(A) Identify existing cybersecurity concerns with the Internet and systems it uses.

(B) Explain the importance of secured websites and describe how one method of encryption works.

(c) **Data Analysis.**

(1) **Storage.** Identify how the same data can be represented in multiple ways.

(2) **Collection, Visualization, and Transformation.** Collect data using computational tools and transform the data to make it more useful.

(3) **Inference and Models.** Use models and simulations to formulate, refine, and test hypotheses.

(d) **Algorithms and Programming.**

(1) **Algorithms.** Use an existing algorithm in natural language or pseudocode to solve complex problems.

(2) **Control.** Develop programs that utilize combinations of repetition, conditionals, and the manipulation of variables representing different data types.

(3) **Modularity.** Decompose problems into parts to facilitate the design, implementation, and review of programs.

(4) **Program Development.**

(A) Seek and incorporate feedback from team members to refine a solution to a problem.

(B) Incorporate existing code, media, and libraries into original programs and give attribution.

(C) Test and refine programs using teacher provided inputs.

(D) Break down tasks and follow an individual timeline when developing a computational artifact.

(E) Document text-based programs in order to make them easier to follow, test, and debug.

(e) **Impacts of Computing.**

(1) **Culture.**

(A) Explain how computing impacts peoples' everyday activities.

(B) Identify and discuss the technology proficiencies needed in the classroom and the workplace, and how to meet the needs of diverse users.

(2) **Social Interactions.** Individually and collaboratively develop and conduct an online survey that seeks input from a broad audience. Describe and use safe, appropriate, and responsible practices (netiquette) when participating in online communities (e.g., discussion groups, blogs, social networking sites).

(3) **Safety, Law, and Ethics.** Differentiate between appropriate and inappropriate content on the Internet, and identify unethical and illegal behavior online.

210:15-3-207. Computer Science standards for seventh grade

(a) **Computing Systems.**

(1) **Devices.** Evaluate existing computing devices and recommend improvements to design based on analysis of how other users interact with the device.

(2) **Hardware and Software.** Evaluate and recommend improvements to software and hardware combinations used to collect and exchange data.

(3) **Troubleshooting.** Identify and fix increasingly complex software and hardware problems with computing devices and their components.

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Explain how a system responds when a packet is lost and the effect it has on the transferred information.

(2) **Cybersecurity.**

(A) Explain how to protect electronic information, both physical (e.g., hard drive) and digital; identify cybersecurity concerns and options to address issues with the Internet and the systems it uses.

(B) Identify and explain two or more methods of encryption used to ensure and secure the transmission of information.

(c) **Data Analysis.**

(1) **Storage.** Create multiple representations of data.

(2) **Collection, Visualization, and Transformation.** Collect data using computational tools and transform the data to make it more useful and reliable.

(3) **Inference and Models.** Discuss the correctness of a model representing a system by comparing the model's

generated results with observed data from the modeled system.

(d) **Algorithms and Programming.**

(1) **Algorithms.** Select and modify an existing algorithm in natural language or pseudocode to solve complex problems.

(2) **Control.** Develop programs that utilize combinations of repetition, compound conditionals, and the manipulation of variables representing different data types.

(3) **Modularity.** Decompose problems into parts to facilitate the design, implementation, and review of increasingly complex programs.

(4) **Program Development.**

(A) Seek and incorporate feedback from team members and users to refine a solution to a problem.

(B) Incorporate existing code, media, and libraries into original programs of increasing complexity and give attribution.

(C) Test and refine programs using a variety of student created inputs.

(D) Distribute tasks and maintain a project timeline when collaboratively developing computational artifacts.

(E) Document text-based programs of increasing complexity in order to make them easier to follow, test, and debug.

(e) **Impacts of Computing.**

(1) **Culture.**

(A) Explain how computing impacts innovation in other fields.

(B) Relate the distribution of computing resources in a global society to issues of equity, access, and power.

(2) **Social Interactions.** Individually and collaboratively use advanced tools to design and create online content (e.g., digital portfolio, multimedia, blog, web page). Describe and use safe, appropriate, and responsible practices (netiquette) when participating in online communities (e.g., discussion groups, blogs, social networking sites).

(3) **Safety, Law, and Ethics.** Explain the connection between the longevity of data on the internet, personal online identity, and personal privacy.

210:15-3-208. Computer Science standards for eighth grade

(a) **Computing Systems.**

(1) **Devices.** Develop and implement a process to evaluate existing computing devices and recommend improvements to design based on analysis of how other users interact with the device.

(2) **Hardware and Software.** Design and refine projects that combine hardware and software components to collect and exchange data.

(3) **Troubleshooting.** Systematically identify, fix, and document increasingly complex software and hardware problems with computing devices and their components.

(b) **Networks and the Internet.**

(1) **Network Communication and Organization.** Explain protocols and their importance to data transmission; model how packets are broken down into smaller pieces and how they are delivered.

(2) **Cybersecurity.**

(A) Evaluate physical and digital procedures that could be implemented to protect electronic data/information; explain the impacts of hacking, ransomware, scams, fake scans, and ethical/legal concerns.

(B) Compare the advantages and disadvantages of multiple methods of encryption to model the secure transmission of information.

(c) **Data Analysis.**

(1) **Storage.** Analyze multiple methods of representing data and choose the most appropriate method for representing data.

(2) **Collection, Visualization, and Transformation.** Develop, implement, and refine a process that utilizes computational tools to collect and transform data to make it more useful and reliable.

(3) **Inference and Models.** Refine computational methods based on the data generated by the models.

(d) **Algorithms and Programming.**

(1) **Algorithms.** Design algorithms in natural language, flow and control diagrams, comments within code, and/or pseudocode to solve complex problems.

(2) **Control.** Develop programs that utilize combinations of nested repetition, compound conditionals, procedures without parameters, and the manipulation of variables representing different data types.

(3) **Modularity.** Decompose problems and subproblems into parts to facilitate the design, implementation, and review of complex programs.

(4) **Program Development.**

(A) Seek and incorporate feedback from team members and users to refine a solution to a problem that meets the needs of diverse users.

(B) Incorporate existing code, media, and libraries into original programs of increasing complexity and give attribution.

(C) Systematically test and refine programs using a range of student created inputs.

(D) Explain how effective communication between participants is required for successful collaboration when developing computational artifacts.

(E) Document text-based programs of increasing complexity in order to make them easier to follow, test, and debug.

(e) **Impacts of Computing.**

(1) **Culture.**

(A) Describe the trade-offs associated with computing technologies (e.g., automation), explaining their effects on economies and global societies, and explore careers related to the field of computer science.

(B) Evaluate and improve the design of existing technologies to meet the needs of diverse users and increase accessibility and usability. Evaluate how technology can be used to distort, exaggerate, and misrepresent information.

(2) **Social Interactions.** Communicate and publish key ideas and details individually or collaboratively in a way that informs, persuades, and/or entertains using a variety of digital tools and media-rich resources. Describe and use safe, appropriate, and responsible practices (netiquette) when participating in online communities (e.g., discussion groups, blogs, social networking sites).

(3) **Safety, Law, and Ethics.** Discuss the social impacts and ethical considerations associated with cybersecurity, including the positive and malicious purposes of hacking.

210:15-3-209. Computer Science standards for high school

(a) **Standards for Level 1 (to be completed by the end of 10th grade).**

(1) **Computing Systems.**

(A) **Devices.** Explain how abstractions hide the underlying implementation details of computing systems embedded in everyday objects.

(B) **Hardware and Software.** Explain the interactions between application software, system software, and hardware.

(C) **Troubleshooting.** Develop and apply criteria for systematic discovery of errors and systematic strategies for correction of errors in computing systems.

(2) **Networks and the Internet.**

(A) **Network Communication and Organization.** Evaluate the scalability and reliability of networks by identifying and illustrating the basic components of computer networks (e.g., routers, switches, servers, etc.) and network protocols (e.g., IP, DNS, etc.).

(B) **Cybersecurity.**

(i) Compare physical and cybersecurity measures by evaluating trade-offs between the usability and security of a computing system.

(ii) Illustrate how sensitive data can be affected by attacks.

(iii) Recommend security measures to address various scenarios based on information security principles.

(iv) Explain trade-offs when selecting and implementing cybersecurity recommendations from multiple perspectives such as the user, enterprise, and government.

(3) **Data Analysis.**

(A) **Storage.**

(i) Translate and compare different bit representations of data types, such as characters, numbers, and images.

(ii) Evaluate the trade-offs in how data is organized and stored digitally.

(B) **Collection, Visualization, and Transformation.** Use tools and techniques to locate, collect, and create visualizations of small- and large-scale data sets (e.g., paper surveys and online data sets).

(C) **Inference and Models.** Show the relationships between collected data elements using computational models.

(4) **Algorithms and Programming.**

(A) **Algorithms.** Create a prototype that uses algorithms (e.g., searching, sorting, finding shortest distance) to provide a possible solution for a real-world problem.

(B) **Variables.** Demonstrate the use of lists (e.g., arrays) to simplify solutions, generalizing computational problems instead of repeatedly using primitive variables.

(C) **Control.** Justify the selection of specific control structures (e.g., sequence, conditionals, repetition, procedures) considering program efficiencies such as readability, performance, and memory usage.

(D) **Modularity.**

(i) Break down a solution into procedures using systematic analysis and design.

(ii) Create computational artifacts by systematically organizing, manipulating, and/or processing data.

(E) **Program Development.**

(i) Create software by analyzing a problem and/or process, developing and documenting a solution, testing outcomes, and adapting the program for a variety of users.

(ii) Define and classify a variety of software licensing schemes (e.g., open source, freeware, commercial) and discuss the advantages and disadvantages of each scheme in software development.

(iii) While working in a team, develop, test, and refine event-based programs that solve practical problems or allow self-expression.

(iv) Using visual aids and documentation, illustrate the design elements and data flow (e.g., flowcharts, pseudocode) of the development of a complex program.

(v) Evaluate and refine computational artifacts to make them more user-friendly, efficient, and/or accessible.

(5) **Impacts of Computing.**

(A) **Culture.**

(i) Evaluate the ways computing impacts personal, ethical, social, economic, and cultural practices.

(ii) Test and refine computational artifacts to reduce bias and equity deficits.

(iii) Demonstrate how a given algorithm applies to problems across disciplines.

(B) **Social Interactions.** Demonstrate how computing increases connectivity among people of various cultures.

(C) **Safety, Law, and Ethics.**

(i) Explain the beneficial and harmful effects that intellectual property laws can have on innovation.

(ii) Explain the privacy concerns related to the large-scale collection and analysis of information about individuals (e.g., how businesses, social media, and the government collect and use data) that may not be evident to users.

(iii) Evaluate the social and economic consequences of how law and ethics interact with digital aspects of privacy, data, property, information, and identity.

(b) **Standards for Level 2 (to be completed by the end of 12th grade).**

(1) **Computing Systems.**

(A) **Hardware and Software.** Identify and categorize roles of an operating system.

(B) **Troubleshooting.** Identify how hardware components facilitate logic, input, output, and storage in computing systems.

(2) **Networks and the Internet.**

(A) **Network Communication and Organization.** Describe the issues that impact network functionality (e.g., bandwidth, load, latency, topology).

(B) **Cybersecurity.** Compare and refine ways in which software developers protect devices and information from unauthorized access.

(3) **Data Analysis.**

(A) **Collection, Visualization, and Transformation.**

(i) Use data analysis tools and techniques to identify patterns from complex real-world data.

(ii) Generate data sets that use a variety of data collection tools and analysis techniques to support a claim and/or communicate information.

(B) **Inference and Models.** Use models and simulations to help formulate, refine, and test scientific hypotheses.

(4) **Algorithms and Programming.**

(A) **Algorithms.**

(i) Describe how artificial intelligence algorithms drive many software and physical systems (e.g., autonomous robots, computer vision, pattern recognition, text analysis).

(ii) Develop an artificial intelligence algorithm to play a game against a human opponent or solve a real-world problem.

(iii) Critically examine and trace classic algorithms (e.g., selection sort, insertion sort, binary search, linear search).

(iv) Evaluate algorithms (e.g., sorting, searching) in terms of their efficiency and clarify.

(B) **Variables.** Compare and contrast simple data structures and their uses (e.g., lists, stacks, queues).

(C) **Control.** Trace the execution of repetition (e.g., loops, recursion), illustrating output and changes in values of named variables.

(D) **Modularity.**

(i) Construct solutions to problems using student-created components (e.g., procedures, modules, objects).

(ii) Design or redesign a solution to a large-scale computational problem by identifying generalizable patterns.

(iii) Create programming solutions by reusing existing code (e.g., libraries, Application Programming Interface [APIs], code repositories).

(E) **Program Development.**

(i) Create software that will provide solutions to a variety of users, using the software life cycle process.

(ii) Design software in a project team environment using integrated development environments (IDEs), versioning systems, and collaboration systems.

(iii) Develop programs for multiple computing platforms.

(iv) Systematically check code for correctness, usability, readability, efficiency, portability, and scalability through peer review.

(v) Develop and use a series of test cases to verify that a program performs according to its design specifications.

(vi) Explain security issues that might lead to compromised computer programs.

(vii) Modify an existing program to add additional functionality and discuss intended and unintended implications (e.g., breaking other functionality).

(5) **Impacts of Computing.**

(A) **Culture.**

(i) Evaluate the beneficial and harmful effects that computational artifacts and innovations have on society.

(ii) Evaluate the impact of equity, access, and influence on the distribution of computing resources in a global society.

(iii) Design and implement a study that evaluates or predicts how computation has revolutionized an aspect of our culture and how it might evolve (e.g., education, healthcare, art/entertainment, energy).

(B) **Safety, Law, and Ethics.** Debate laws and regulations that impact the development and use of software.

[OAR Docket #19-724; filed 8-7-19]

TITLE 230. STATE ELECTION BOARD CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #19-700]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. General Administration of the County Election Board Office
Part 5. Maintaining the Office
230:10-7-43. Retention of forms and materials documenting voter registration transactions [AMENDED]
230:10-7-48.1. County Election Board electronic mail addresses [AMENDED]
Part 9. Finances
230:10-7-77. Pre-numbered receipts required [AMENDED]
230:10-7-78. Pre-numbered vouchers required [AMENDED]
230:10-7-80. Monthly report filed with County Clerk [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107; Secretary of the State Election Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019 through March 22, 2019
PUBLIC HEARING:
March 22, 2019
ADOPTION:
March 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:

Amendments are proposed in several Sections in Subchapter 7. Some amendments reflect new retention procedures for voter registration update documents resulting from digital submissions of voter registration transactions from the Department of Public Safety or from update transactions submitted online by voters.

Early in 2018, as part of security upgrades to the State Election Board's proprietary election management system, the Secretary of the State Election Board acquired for each County Election Board an "@elections.ok.gov" e-mail address and requires it to be used for all official communications with voters, other County Election Boards, and the State Election Board office. The amendments also require the use of the state-provided "@elections.ok.gov" e-mail address for all communications with the State Election Board office, on all public-facing websites, on social media accounts, and for communications with voters and the general public, unless an exemption has been granted.

The amendments also provide for an exemption to the mandated use of the state-provided e-mail addresses and a process for County Election Board Secretaries to qualify for and to request said exemption. The exemption is available only to County Election Boards who use a secure e-mail account provided and administered by the county's information technology and services personnel.

Other proposed amendments update information about the content and availability of receipts and vouchers used with the County Election Board Special Depository Account and about the availability of State Auditor and Inspector Form 140, which is used to make a monthly report to the County Treasurer concerning transactions in the Special Depository Account.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD OFFICE

PART 5. MAINTAINING THE OFFICE

230:10-7-43. Retention of forms and materials documenting voter registration transactions

(a) **Original registration records removed from Central File.** Original voter registration records that have been removed from the Central File due to cancellation of registration or due to change in registration shall be retained for 24 months following removal. These original registration records shall be filed together by month in alphabetical order. See also 230:10-7-40.

(b) **Materials documenting cancellation of registration.** Materials used to document the cancellation of a voter's registration shall be retained for 24 months following the cancellation. These materials include ~~Cancellation of Registration of Deceased Voter by Next of Kin forms; Request to Cancel Registration of Deceased Voter forms; Notification of County Resident's Death forms;~~ Request to Cancel Registration of Deceased Voter; Potential Deletion Reports; Potential Duplicate Reports; Judgment of Incapacitation Reports, cancellation requests from voters; certified copies of death certificates; notices of felony conviction; Deleted Voters by Reason reports, address confirmation return cards indicating addresses outside the county; True Duplicates Deleted Reports, and any document used by the Oklahoma National Guard to notify the County Election Board of the death in the line of duty of a member of the Oklahoma National Guard.

(c) **Rejected voter registration applications.** Rejected voter registration applications shall be retained for 24 months following rejection. Rejected applications shall be filed by month in alphabetical order.

(d) **Rejection notices returned by post office.** Rejection notices that have been returned by the ~~post office undelivered~~ United States Postal Service marked "undeliverable as addressed" shall be retained for 24 months following return. Returned undelivered rejection notices shall be filed by month in alphabetical order.

(e) **Voter identification cards returned by post office.** Voter identification cards that have been returned by the ~~post office undelivered~~ United States Postal Service marked "undeliverable as addressed" shall be retained for 24 months following return. Returned undelivered voter identification cards shall be filed by month in alphabetical order.

(f) **Insufficient Information Rejection Notices returned by applicant.** An Insufficient Information Rejection Notice returned to the County Election Board by the applicant with

the information required to complete the application shall be filed in the Additional Information Correspondence file or in the Central File inside a file sleeve containing the voter's original voter registration application. Material in this file shall be retained as long as the voter remains registered. An Insufficient Information Rejection Notice that is returned by a voter but still does not contain enough information to complete the application shall be filed by month in alphabetical order and retained for 24 months.

(g) **Address confirmation return cards and undelivered address confirmation notices.** All address confirmation return cards received by the County Election Board shall be retained for 24 months, except return cards used to change a voter's address in the county. Address confirmation return cards used to change the voter's address in the county shall be filed in the Additional Information Correspondence file and shall be retained as long as the voter remains registered. Undelivered address confirmation notices shall be retained for 24 months.

(h) **Registration update documents printed from MESA.** When certain voter registration transactions - such as address changes submitted electronically by the Department of Public Safety, address changes and political affiliation changes submitted online, and address changes that result from returned address confirmation notices - are processed in MESA, a form is created automatically to document the registration change. These registration update documents, also called "Central File form" shall be retained in the Central File. It is the recommendation of the State Election Board that such Central File forms be placed inside a file sleeve with the voter's original voter registration application.

230:10-7-48.1. County Election Board electronic mail addresses

~~The Secretary of the County Election Board shall obtain at least one electronic mail address to use for correspondence with the State Election Board and to receive completed Federal Post Card Application (FPCA) forms from uniformed services and overseas voters as outlined in 230:30-5-1.1 and 230:30-9-5. The Secretary shall notify the State Election Board of the electronic mail address or addresses to be used for these purposes, and if more than one address is obtained, the Secretary shall designate the address to be used for routine correspondence and the address to be used for the receipt of FPCAs. The Secretary shall ensure that more than one member of the County Election Board staff has access to each such electronic mail address and that each such electronic mail address is checked on at least a daily basis for correspondence and FPCAs. Electronic mail addresses used for the purposes outlined in this Section shall not be personal addresses and shall be configured to include as many of the following elements as possible: the county name, the designation "CEB," the county number, and the designation "OK." One acceptable example of an e-mail address containing most of these elements is "DouglasCEB78@emailservice.com." The Secretary immediately shall notify the State Election Board of any changes to electronic mail addresses used for the purposes outlined in this Section.~~

(a) The Secretary of the State Election Board has obtained and provided to each County Election Board office an "@elections.ok.gov" e-mail address. These e-mail addresses are administered by the State of Oklahoma's Office of Management and Enterprise Services and are accessed through a webmail service. Each such e-mail address is formatted as follows: CountyNameCounty@elections.ok.gov. Use of these e-mail accounts is required to send and receive all official communication with the State Election Board office and with voters, and is strongly recommended for communications with officials of school districts, municipalities, and other entities for which the County Election Board conducts elections, and with other county officers. These e-mail addresses shall be used on all public-facing websites, social media sites, and on all informational materials maintained or produced by the County Election Board. These e-mail addresses will appear on the State Election Board website and will be provided to the Federal Voting Assistance Program by the State Election Board for the use of uniformed services and overseas voters from Oklahoma.

(b) The only e-mail account that may accessed on a computer in a County Election Board office that runs the MESA (Modern Election Support Application) software is the state-provided "@elections.ok.gov" account unless an exemption, as outlined in (c) of this Section, has been granted by the State Election Board.

(c) A County Election Board that uses an e-mail account assigned to it by its county Information Services department may request an exemption to continue using that e-mail address, to access it on computers in the office running MESA, and to publish it on public-facing county websites maintained by the county or on social media sites maintained by the County Election Board staff. Requests for such exemptions shall be submitted to the State Election Board Information Services Division. If approved, notice of the approval will be provided in writing by the Assistant Secretary of the State Election Board or by the Director of Information Services.

PART 9. FINANCES

230:10-7-77. Pre-numbered receipts required

A pre-numbered receipt shall be issued for all funds received by the County Election Board and deposited in the Special Depository Account. ~~The pre-numbered receipt shall be self-duplicating.~~ The face of the receipt shall show both the source of the funds and the purpose for which the funds were received. The receipt produced from MESA is sufficient to meet this requirement.

230:10-7-78. Pre-numbered vouchers required

(a) The Secretary of the County Election Board shall use the pre-numbered~~, self-duplicating~~ voucher known as voucher #214 with the Special Depository Account. Voucher #214 has been approved by the State Auditor and Inspector for use with the Special Depository Account. Vouchers issued from the Special Depository Account shall show the purpose of the payment. For example, a notation such as, "Compensation

for Judge, Precinct 11, 8-23-88, Primary Election" should be written on the face of the voucher.

(b) The Secretary of the County Election Board shall be responsible for obtaining paper stock for vouchers that meets standard banking requirements. Specifications and requirements for the size, perforation, and numbering of such paper stock for vouchers are available from the State Election Board. Strict adherence to such specifications and to any requirements of the County Treasurer and/or of a banking institution used by the county is mandatory.

230:10-7-80. Monthly report filed with County Clerk

The Secretary is required to file a report on the Special Depository Account with the County Clerk no later than the second Monday of each month. The report shall be filed on the most current version of the State Auditor and Inspector's Form 140 ~~(1987)~~. This form is available from the County Clerk. A PDF version of the current form also is available on the State Auditor and Inspector's website: www.sai.ok.gov. The report is required to include the sources and amounts of all funds received and the amounts and purposes of vouchers issued during the preceding calendar month. The report on Form 140 ~~(1987)~~ shows the totals for expenditures and receipts from the Special Depository Account Ledger for the month of the report. A copy of the Ledger Sheet-SDA report for the month of the report is required to be attached to the Form 140 ~~(1987)~~ to provide an itemized accounting of the Special Depository Account transactions. The Ledger Sheet-SDA report is available in MESA.

[OAR Docket #19-700; filed 6-27-19]

TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION

[OAR Docket #19-701]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Application for Voter Registration
Part 17. Public Records
230:15-5-73. All registration records public [AMENDED]
Part 21. Voter Registration Application by Mail
230:15-5-86. Deadlines for submitting mail applications [AMENDED]
Subchapter 9. Receiving and Processing Voter Registration Applications
Part 5. Processing Voter Registration Applications
230:15-9-18. Entering paper applications for voter registration in MESA [AMENDED]
230:15-9-25. Processing applications for restricted records status [AMENDED]
Subchapter 11. Voter Registration List Maintenance
Part 1. Cancellation of Voter Registration
230:15-11-8. Cancellation for felony conviction [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107; Secretary of the State Election Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019 through March 22, 2019
PUBLIC HEARING:
March 22, 2019
ADOPTION:
March 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:

Proposed amendments in Subchapter 5 update and clarify requirements for the retention and redaction of personal information on voter registration forms. Further amendments clarify deadlines for voter registration applications submitted by mail.

Oklahoma voter registration forms are open records, but state law - 26 O.S. 2017 Supp., §4-112(H) - provides that such information provided as part of a voter registration application be kept confidential by the State Election Board and the County Election Boards.

One amendment alters the description of the deadline for receipt of voter registration applications submitted in person at the County Election Board office and at any state agency required to provide voter registration services or by mail has proven confusing to many persons over the years, and by clarifying and restating the description of the deadline we hope to alleviate the problem.

In Subchapter 9, amendments clarify requirements for the retention of information indicating the source of a voter registration application form.

The source of an application is collected via a code number printed on the forms distributed by the State Election Board the Department of Public Safety and motor license agencies and to public assistance agencies required by the National Voter Registration Act to provide voter registration services to persons applying for services offered by these agencies. The code number is printed on a part of the voter registration application form that is **not** intended to be retained once the registration is processed and approved. The amendment clarifies that this part of the form must be detached and destroyed before the registration form is filed in the Central File registry.

Further amendments concern a new class of persons who may apply for restricted records status with the County Election Board. This new class established by an amendment in 26 O.S. §4-115.2 which became effective on November 1, 2018.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE SEPTEMBER 16, 2019:

SUBCHAPTER 5. APPLICATION FOR VOTER REGISTRATION

PART 17. PUBLIC RECORDS

230:15-5-73. All registration records public

All voter registration records, except as specifically designated otherwise in federal or state law, must be available for public inspection and copying or mechanical reproduction during regular office hours. The Secretary shall cooperate with

any individual or group wishing to inspect and copy the registration records, and a uniform policy shall be established so that such inspection and copying will not interfere with normal operations of the office. However, a voter's full or partial Oklahoma driver license number or Social Security number provided on a voter registration application form shall not be considered a public record and shall be kept confidential by the Secretary of the County Election Board. When a copy of an original voter registration application is made, the full or partial driver license number or Social Security number shall be redacted on the copy. [26:4-112; 51:24A.5] See 230:10-7-59.

PART 21. VOTER REGISTRATION APPLICATION BY MAIL

230:15-5-86. Deadlines for submitting mail applications

(a) **Submitting mail applications.** Applications for new voter registration or for change of voter registration may be submitted at any time.

(b) **Deadline for submitting applications for an election.** Valid applications ~~that are~~ received by mail and ~~that are~~ postmarked ~~24 days or less~~ not later than the 25th day prior to an election will ~~not~~ be activated ~~until after~~ for that election. Applications ~~that are not postmarked but that are~~ received by mail without a postmark ~~more than 19 days~~ through the 19th day prior to an election will be activated for that election if they are determined to be valid applications.

(c) **Applications received after deadline for an election.** Valid applications that are received by mail ~~with postmarks~~ postmarked 24 days or less prior to an election or that are received by mail without postmarks ~~19 days or less~~ fewer than 19 days prior to an election will be activated ~~immediately~~ after the election.

SUBCHAPTER 9. RECEIVING AND PROCESSING VOTER REGISTRATION APPLICATIONS

PART 5. PROCESSING VOTER REGISTRATION APPLICATIONS

230:15-9-18. Entering paper applications for voter registration in MESA

(a) **Entering voter registration application information in MESA.** All information provided by the applicant on a paper voter registration application form shall be entered into MESA. Follow the appropriate software instructions to enter the voter registration data. Refer to the following rules to resolve questions about individual applications.

(1) **Received date.** The received date is the date stamped or written on a voter registration application form by the agency that first receives it from the applicant.

(A) The received date for an application submitted by mail is the date the State Election Board received and stamped it. The State Election Board's blue received date stamp is applied to the back of the form.

(B) The received date for an application submitted at a motor license agency or at any voter registration agency identified in 230:15-5-122 and 230:15-5-123 is the date stamped or written by agency personnel in the space provided for this purpose on the face of the form.

(C) The received date for a paper voter registration application submitted at the County Election Board in person by an applicant or by a third party on the behalf of an applicant shall be the date stamped on the back of the form by the County Election Board.

(D) The received date for a voter registration application bearing no date stamped or written by a receiving agency is the date by the applicant beside his or her signature on the form.

(2) **Postmark.** The postmark date from a voter registration application submitted by mail shall be entered in the voter registration software. If there is no postmark or if the date is missing or illegible, leave the postmark field blank. If multiple paper voter registration applications are received by mail at the State Election Board in a single envelope with a postmark, the postmark date from that envelope is applied to each application with a red stamp.

(3) **Name.** Enter the voter's name exactly as provided on the application form.

(4) **Political affiliation.** Enter the voter's choice of political party as it appears on the application form. If the voter marked the "No Party" box, select "Independent" from the drop-down menu. (There is not an Independent Party in Oklahoma. Independent means "no party.") If the applicant neither chose nor wrote in a party in the Political Affiliation section on the application form, if the applicant marked more than one party, or wrote in a party that is not recognized in Oklahoma, the political affiliation field on the screen shall be left blank with the result that the software will automatically designate the applicant's affiliation as Independent. See also 230:15-5-84 and 230:15-9-22.

(5) **Date of birth.** An applicant for new voter registration must provide his or her date of birth (month, day, and year) on the application form. See 230:15-5-84. An application for new registration that does not include the date of birth shall be rejected. See 230:15-9-31. In the event that a registered voter submits an application for change of registration and does not provide his or her date of birth, the application shall be rejected unless both of the following circumstances exist.

(A) The application is valid in all other respects and County Election Board personnel are able to make positive identification of the voter from other information on the application form and from information already recorded in the voter registration database.

(B) The voter's date of birth already is recorded in the voter registration database.

(6) **Identification number.** Enter the Oklahoma driver license number and/or last four digits of the Social Security number. If the applicant does not provide either of these identification numbers, but checks the appropriate box on the application form to indicate that the applicant does not possess either of these numbers, check the corresponding box on the screen. If the applicant used an older version of the Oklahoma Voter Registration Application form that does not provide a check box for the applicant to indicate that he or she does not possess either of these identification numbers, the application shall be rejected.

(7) **Duplicates.** When voter registration application information is entered in MESA, the software automatically searches for and identifies duplicate or potential duplicate records in the state. The search criteria are first name, last name, and date of birth and/or an identification number such as the last four digits of the Social Security number or driver license number. If an application appears to duplicate an existing voter registration either in your county or in another county, follow the appropriate software instructions and the procedure described in 230:15-9-23 to investigate and resolve the potential duplication.

(8) **Residence address.** An applicant for voter registration is required to provide his or her residence address on the application form. Enter the applicant's residence address in the appropriate fields on the screen. If the address cannot be assigned in the Street Guide based on the information entered, see 230:15-9-18.1.

(9) **Mailing address.** If the applicant provided a mailing address different from his or her residence address, enter the mailing address. If the applicant's mailing address is the same as the residence address or if the space for mailing address is blank, leave the mailing address field on the screen blank.

(10) **County of Residence.** An applicant for voter registration is required to indicate the county of his or her residence. An application on which the county of residence is either not indicated or is indicated incorrectly shall be entered in the voter registration software with one of the following results.

(A) If the address is located within the county, the application shall be approved.

(B) If the address is not located within the county, but County Election Board personnel are able to determine the county in which the voter's residence is located, the application form shall be mailed directly to the correct county.

(C) If another county is indicated on the form, the application shall be mailed directly to the correct County Election Board.

(D) If the address is not located within the county and the correct county cannot be determined, the application shall be rejected with the "OT" ("Other") rejection code. When the blank rejection notice is printed, write or type Enter the following sentences in the space free-form text field provided on screen: "You did not indicate the county in which you reside on your application for voter registration. Your application cannot be processed without this information. You must submit a new application form that indicates your county of residence." This information will be added to the voter registration rejection notice addressed to this voter. It is recommended that a new Oklahoma Voter Registration Application form be enclosed with the rejection notice.

(11) **Rejection codes.** An application for new voter registration that does not contain all the required information listed in 230:15-5-84 shall be rejected. The software automatically applies a rejection code for insufficient name, insufficient address, insufficient identification number, insufficient date of birth, if the application duplicates an existing registration, and if the applicant is under 18 years of age. If the application is unsigned or if the application must be rejected for any other reason, County Election Board personnel flag the appropriate rejection code on the screen. See 230:15-9-31. Some automatic rejection codes may be overridden in the following circumstances.

(A) The Under Age (UN) will become eligible on or before election day, as described in 230:15-5-2, follow the software instructions to override the automatic rejection code.

(B) The Duplicate (DU) rejection code may be overridden if the approval of the new application would prevent the removal of an inactive voter.

(12) **Form codes.** Oklahoma Voter Registration Application forms include a form code that must be recorded in MESA for statistical purposes. Form codes identify the agency from which the registration application originated. Form codes consist of ten alphanumeric characters. Once recorded in MESA, the part of the application form containing the form code shall be removed and shall not be retained.

(13) **Source codes.** A code to identify the source of an application for statistical purposes shall be entered in the voter registration software. If the source of an application is a motor license agency, a specific four-digit agency code also shall be entered. After the source code is entered, the instruction section of the application form bearing the source identification shall be removed and destroyed. It shall not be retained in the Central File.

(14) **Previous registration information.** If the applicant provided information about previous voter registration in another state or in another county in Oklahoma, enter the previous registration information in the appropriate fields on the screen. If the applicant was previously registered in another county in Oklahoma, some previous information may be filled in automatically by the software. Do not enter information about former registration in your own county in these fields.

(15) **Eligibility questions and oath.** The applicant shall answer the two eligibility questions and shall sign and date the oath. If an applicant fails to answer the two questions but signs and dates the oath, the application shall be rejected. If the applicant answers either question "No," the application shall be rejected. (On older versions of the

Oklahoma Voter Registration Application form, these eligibility questions are located in the instructions area of the form.) If the applicant answers the eligibility questions "Yes," but fails to sign and date the oath, the application shall be rejected.

(b) **Filing voter registration applications.** If a voter registration application is determined to be valid and is approved, place the application form in the appropriate valid application file until voter identification cards are printed. After the voter identification card is mailed to the voter, file the application form in the Central File. If a voter registration application must be rejected, file the application in the appropriate rejected application file.

230:15-9-25. Processing applications for restricted records status

(a) Members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, the immediate family members of law enforcement personnel, corrections officers, and persons covered by victim's protection orders are entitled by law to apply to the Secretary of the County Election Board for restricted records status. [26:4-115.2] The law defines "immediate family of law enforcement personnel" as a spouse, child by birth or adoption, stepchild or parent living in the same residence as the law enforcement personnel. [26:4-115.2] The spouse and/or dependent of a voter entitled to apply for restricted records status also may apply for restricted records status. Restricted records status shall apply to the voter registration form in the Central File, to registration information in the voter registration database, to materials used to request and cast absentee ballots, and if specifically requested by the voter, any Declaration of Candidacy filed by the voter. Voter registration information for a restricted records voter shall be available only to authorized County Election Board personnel for administrative purposes, with the exception that it may be provided to a candidate or a candidate's representative or other lawful authority in connection with a contest of candidacy, contest of election, or a petition challenge as provided by law. [26:4-115.2]

(b) A voter who is eligible for restricted records status may apply for such status by writing a letter to the Secretary of the County Election Board setting forth the following information.

(1) Voter's name as it appears on the voter registration form.

(2) Voter's date of birth.

(3) Last four digits of the voter's Social Security number.

(4) Reason for application for restricted records status. (If voter is covered by victim's protection order, include case number, date of issue and the expiration date of the order.)

(5) A request also to keep a Declaration of Candidacy confidential, if applicable.

(6) Voter's signature.

(7) Date.

(c) Upon receipt of an application for restricted records status, the Secretary of the County Election Board shall follow the appropriate MESA software instructions to enter the restricted records status voter's name, political affiliation, precinct number, school district, and municipality. This will cause the voter's name and district information to print in the appropriate Precinct Registry without the voter's residence address.

(1) Make a placeholder for the Central File. Write only the voter's name, date of birth, and political affiliation on a blank voter registration application form. Write the words "Restricted Records" in the space for item 6, "Street address or directions to your home."

(2) Remove the voter's original voter registration application form from the Central File and replace it with the placeholder form.

(3) Check the Additional Information file. Remove any documentation of the voter's registration and attach it to the original voter registration application form.

(4) Remove the voter's absentee ballot application from the appropriate file and attach it to the voter registration form.

(5) Locate the voter's registration information in MESA and follow the appropriate software instructions to delete the registration information.

(6) ~~Contact the State Election Board to have this voter's voter registration information permanently deleted from the MESA database.~~

~~(7)~~ Attach the voter's application for restricted records status to the voter's original registration form and other materials and file in the restricted records status file.

(d) The Secretary of the County Election Board shall designate a file cabinet with a lock or any other appropriate container with a lock as the restricted records status file. Access to the restricted records status file shall be restricted to the Secretary, Assistant Secretary or Chief Clerk, and other County Election Board employees authorized by the Secretary.

(e) Restricted records status shall be effective immediately upon receipt of an application from a qualified voter, and it shall remain in effect until the voter chooses to end it. The voter's registration information may be removed from restricted records status only upon receipt of written instruction from the voter.

(f) Any subsequent application for change of voter registration initiated by a restricted records voter shall be processed routinely, with the exception that the voter registration application information shall not be entered in MESA and the form shall be filed in the restricted records status file instead of the Central File. If necessary, however, the voter's information shall be modified in the Restricted Records Maintenance area of MESA. Any application for absentee ballots from such a voter also shall be processed manually. The application for absentee ballots shall be filed in the restricted records status file.

(g) A restricted records status voter who votes in person at his or her precinct polling place shall sign the Precinct Registry beside his or her own name. The Secretary shall instruct Precinct Officials in precincts with restricted records status voters that no address confirmation is required for these voters.

(h) The Secretary shall print the Restricted Records List from MESA and provide it to the in-person Absentee Voting Board on each day of in-person absentee voting. A restricted

records status voter who votes at the in-person absentee polling place shall sign the Absentee Voting Board Record.

(i) An ACP Absentee Ballot Application form and ACP Voter History Record form received from the State Election Board shall be filed immediately in the restricted records status file. All existing information in MESA about an ACP voter already has been permanently deleted from the database. No entry shall be made in MESA concerning ACP voters and the name, address, and precinct number of an ACP voter shall not appear on any list or report.

SUBCHAPTER 11. VOTER REGISTRATION LIST MAINTENANCE

PART 1. CANCELLATION OF VOTER REGISTRATION

230:15-11-8. Cancellation for felony conviction

(a) *The court clerk in each county shall prepare a list monthly of all persons convicted in the county of a felony and shall transmit the list to the secretary of the County Election Board.* [26:4-120.4(B)] *The list shall include information necessary to identify a person on the list as a registered voter prescribed by the Secretary of the State Election Board.* [26:4-120.4(B)] The list prepared by the Court Clerk shall include the person's name, full date of birth which shall include the month, day, and year, and, if known, the last four digits of the person's Social Security number, driver license number, and residence address of each person convicted of a felony in the county. The Secretary of the County Election Board shall cancel a voter's registration as outlined in (c) of this Section upon receipt of a list of felony convictions from the Court Clerk.

(b) The Secretary of the County Election Board shall be authorized to cancel a voter's registration as outlined in (c) of this Section upon receiving a notice of felony conviction from a federal court. [26:4-120.4(A)]

(c) Upon receipt of the monthly felony conviction list from the county Court Clerk, County Election Board personnel shall follow appropriate software instructions to enter information from the list into MESA. All information on the list shall be entered in MESA, even if it appears the convicted person may be a resident of another county. Immediately upon entering felony conviction information, MESA searches the county's voter registration information for potential matches. Any potential matches are brought to the screen and the information in the voter registration record of each potential match can be compared with other information provided on the list by the Court Clerk. If County Election Board personnel are able to make a positive match between a voter registration record and a name on the felony conviction list, the voter registration shall be cancelled. After all the information has been entered, the information is automatically transferred to the State Election Board. MESA then searches voter registration records statewide for potential matches, and if found, reports them to the appropriate County Election Board on the Potential Deletion Report. Potential felony conviction matches appear on the Potential Deletion Report in the county where the voter registration record is maintained. County Election Board personnel in that county must examine the information on the Potential Deletion Report and compare it to the identified voter registration record or records to make a positive match. See 230:15-11-2. If a positive match is found, the voter registration shall be cancelled. Following cancellation of a voter registration for felony conviction in MESA, County Election Board personnel shall remove the original voter registration form from the Central File and any documentation in the Additional Information file, note the date the registration was cancelled and the reason for the cancellation. The original registration form and any documentation of Additional Information shall be retained in the Cancellation File for 24 months.

(d) *The Secretary of the State Election Board, secretaries of county election boards, and their agents and employees shall not be held civilly liable for any action taken based upon information concerning felony convictions received from a United States Attorney or a county court clerk pursuant to subsections A and B of this section if a reasonable effort was made to make an accurate match of the information provided with voter registration records before cancelling any voter's registration.* [26:4-120.4]

(e) The Secretary of the County Election Board shall cause the Potential Deletions Report to be printed each month. A copy of the Potential Deletions Report shall be retained for 24 months.

[OAR Docket #19-701; filed 6-27-19]

TITLE 230. STATE ELECTION BOARD
CHAPTER 25. BALLOT PRINTING

[OAR Docket #19-702]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Placing Parties, Candidates, Propositions on Ballot
230:25-13-12. Judicial candidates [NEW]
Subchapter 21. Printer Certification for Digital Ballot Printing
230:25-21-2. Printer certification process [AMENDED]
230:25-21-3. Review and testing of certification ballots [AMENDED]
230:25-21-4. On-site certification review [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107; Secretary of the State Election Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15 through March 22, 2019
PUBLIC HEARING:
March 22, 2019
ADOPTION:
March 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The amendments in Subchapter 13 reenact a Section previously revoked in 2013 because it duplicated statutory language. While the reenacted Section in Subchapter 13 does quote extensively from 26 O.S. § 11-112, this is an esoteric aspect of election law and procedure and certain questions emerged during the 2018 election cycle concerning a race for District Judge in which a nominating district is, in fact, not coextensive with the entire judicial district and the placement of candidates' names on the ballot for the General Election. In the process of answering those questions, the Secretary determined that the content of the revoked Section should be reenacted to provide explanation for the procedures used to place these candidates on the ballot.

Amendments in Subchapter 21 are required to update and clarify the procedure to certify printers to print digital ballots and to correct scriveners and formatting errors. Proposed amendments in Subchapter 21 update the process for printer certification for digital ballot printing and correct scrivener's and formatting errors.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 13. PLACING PARTIES, CANDIDATES, PROPOSITIONS ON BALLOT

230:25-13-12. Judicial candidates

(a) *If two persons file for the same judicial office, their names shall appear on the ballot only at the time of the General Election.* [26:11-110] The order in which the candidates' names appear on the ballot at the General Election is determined by a drawing conducted as outlined in 230:25-11-1(b). *If, at the time of the Primary Election, more than two persons have filed for the same judicial office, their names shall appear on the ballot at the time of the Primary Election.* [26:11-111] The order in which the candidates' names appear on the Primary Election ballot is determined by the drawing described in 230:25-11-1(b).

(b) *If no candidate for the office of an associate district judge, or district judge, if the nominating district is coextensive with the entire judicial district, receives a majority of the votes cast for that office at the Primary Election, the two candidates who receive the highest number of votes will have their names placed on the ballot for the General Election. In the case of district judges, if the nominating district is not coextensive with the whole judicial district or electoral division of a judicial district, the two candidates who receive the highest number of votes at the Primary Election will have their names placed on the ballot for the General Election, whether or not one received a majority of votes cast for that office at the Primary Election.* [26:11-112]

(c) *If one candidate for the office of an associate district judge receives a majority of all votes cast for that office at the Primary Election and, in the case of district judges, if the nominating district is coextensive with the whole judicial district or electoral division of a judicial district, the candidate who received the majority of all votes cast at the Primary Election shall be deemed to have been elected to that office, and that office shall not be listed on the ballot for the General Election.* [26:11-113] The order in which the candidates' names will appear on the General Election ballot is determined by the drawing described in 230:25-13-1.2.

(d) Judicial retention candidates shall appear on the ballot at the General Election. Such candidates shall appear in order by district number and by office number.

SUBCHAPTER 21. PRINTER CERTIFICATION FOR DIGITAL BALLOT PRINTING

230:25-21-2. Printer certification process

(a) A commercial printer participating in the printer certification process first shall be required to produce a quantity of ballots determined by the Secretary of the State Election Board from .pdf files supplied by the State Election Board. Production of these certification ballots shall be accomplished using the digital printing press on which ballots will be printed if a ballot printing contract is awarded to the printer. All ballots are 8 and one-half inches wide. Certification ballot print files shall include the following:

(1) A specified quantity of 14-inch ballots (11-inch ballot with a 3-inch stub).

(2) A specified quantity of 17-inch ballots (14-inch ~~ballots~~ ballot with a 3-inch stub).

(3) A specified quantity of 19-inch ballots (17-inch ~~ballots~~ ballot with a 2-inch stub).

(b) All ballots produced during the certification process shall be printed only on paper that has been tested and approved by the State Election Board for use with the voting device system. A listing of all such tested and approved paper is included in the specifications for ballot printing.

(c) All certification ballots shall meet the post-production requirements included in the specifications for ballot printing, including, but not limited to, trim lines, stub, perforations, stitching, shrink-wrapping, and packaging.

(d) All certification ballots shall be submitted to the Secretary of the State Election Board and shall be delivered no later than the date established at the beginning of the certification process.

230:25-21-3. Review and testing of certification ballots

State Election Board personnel shall review and test the certification ballots submitted by the printer. The ballots shall be marked and processed through the voting device. The ballots also shall be processed through a high-speed scanner controlled by the voting device system software. The results then shall be tabulated in the voting device system software, and all necessary reports shall be printed and examined.

(1) If the ballots cannot be read by the voting device or by the high-speed scanner or if the tabulated results are not as expected, the printer shall be determined to have failed the first part of the certification process. A printer who fails the first part of the certification process may repeat the process one time. If the printer also fails the second time, the printer shall be disqualified from continuing the certification process.

(2) If the ballots are read by the voting device and by the high-speed scanner and if the tabulated results are as expected, the printer shall be determined to have passed the first part of the certification process. The printer then shall proceed to the second part of the certification process, and the State Election Board staff will conduct an on-site review to observe the digital ballot printing process.

230:25-21-4. On-site certification review

(a) Following a printer's successful completion of the first part of the certification process, the State Election Board ballot printing staff shall conduct a certification review on site at the printer's printing facility. The printer shall be required to produce an additional quantity of ballots from .pdf files provided by the State Election Board with the State Election Board ballot printing staff observing the process. The ballots shall be produced as follows:

(1) A specified quantity of 14-inch ballots (11-inch ballot with a 3-inch stub).

(2) A specified quantity of 17-inch ballots (14-inch ~~ballots~~ ballot with a 3-inch stub).

(3) A specified quantity of 19-inch ballots (17-inch ~~ballots~~ ballot with a 2-inch stub).

(b) The State Election Board staff will evaluate the ballots according to the following criteria.

(1) The ballots meet all requirements included in the ballot printing specifications.

(2) The ballots meet all component specifications, including but not limited to, ballot length, printing text area restrictions, and front-to-back registration.

(3) The ballots meet post-production specifications, including but not limited to, trim lines, stub, perforation, stitching, shrink-wrapping, packaging, and shipping of ballots.

(c) The ballots produced during the on-site certification review shall be marked and processed through a voting device and through a high-speed scanner controlled by the voting device system software. The results then shall be tabulated and all necessary reports shall be printed and examined.

(1) If the ballots cannot be read by the voting device or by the high-speed scanner or if the tabulated results are not as expected, the printer shall be determined to have failed the second part of the certification process. A printer who fails the second part of the certification process may repeat the process one time. If the printer also fails the second time, the printer shall be disqualified from bidding on ballot printing contracts for the State Election Board or a County Election Board.

(2) If the ballots are read by the voting device and the high-speed scanner and if the tabulated results are as expected, the printer shall be determined to have passed the second part of the certification process. At this point, the printer shall be certified to print ballots for the eScan A/T in Oklahoma and to bid on ballot printing contracts for the State Election Board and for a County Election Board.

[OAR Docket #19-702; filed 6-27-19]

TITLE 230. STATE ELECTION BOARD
CHAPTER 30. ABSENTEE VOTING

[OAR Docket #19-703]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Absentee Voting Boards
230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
230:30-7-11. Procedure for in-person Absentee Voting Board to receive applications and issue ballots [AMENDED]
230:30-7-12. Processing applications for in-person absentee ballots in MESA [AMENDED]
230:30-7-13. In-person absentee voting procedure for uniformed services or overseas voter [AMENDED]
230:30-7-14.1. Closing the in-person absentee polling place [AMENDED]
230:30-7-14.2. Secretary's procedure at end of in-person absentee voting day [AMENDED]
230:30-7-15. Procedure for provisional voting during in-person absentee voting [AMENDED]
Subchapter 9. Processing Applications
230:30-9-8. Processing first responder/emergency worker emergency absentee applications, issuing ballots, and receiving voted ballots [NEW]
Subchapter 11. Receiving and Processing Absentee Ballots [AMENDED]
230:30-11-1.1. Receiving hand-delivered absentee ballots from voters [AMENDED]
230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters [AMENDED]
Subchapter 19. Counting the Ballots
Part 1. Counting Absentee Ballots on Election Day
230:30-19-4. Procedure for counting absentee ballots on election day [AMENDED]
Subchapter 21. Recording Absentee Voting
230:30-21-1. List of absentee voter applications available [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107; Secretary of the State Election Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15 through March 22, 2019
PUBLIC HEARING:
March 22, 2019
ADOPTION:
March 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Proposed amendments to Subchapter 7 update references to absentee in-person voting days and hours for both state and federal elections. The dates and times of "early voting" days changed several years ago, but some sections in Subchapter 7 that include references to this information were missed in amendments made at that time. Some other sections are amended to update the title of a publication provided by the Secretary of the State Election Board for use by Precinct Officials and by Absentee Voting Board members. The publication's title changed in 2016, but the references to it in the rules on absentee voting were not corrected at that time.

Sections concerning the in-person Absentee Voting Board are amended to clarify and emphasize certain aspects of the procedures for accepting applications, verifying voter eligibility and issuing ballots, and giving credit for voting to in-person absentee voters. The procedure for in-person absentee voters to cast provisional ballots also is updated.

A new Section is added in Subchapter 9 to provide a procedure for first responders and emergency workers to apply for and receive "emergency" absentee ballots when they are being deployed to the area of a natural disaster or declared state of emergency to assist with rescue, recovery, and/or relief efforts within ten days of an election. The new Section in Subchapter 9 implements statutory authorization [26 O.S. 2018 Supp., Section 14-115.6] for such emergency absentee ballots to be requested and issued.

In Subchapter 11, a Section concerning the receipt of absentee ballots from certain voters is amended to clarify requirements and add procedural details. Another Section is amended to clarify certain requirements for uniformed services and overseas voters who return their voted absentee ballots by fax and to specify that these voters cannot return voted absentee ballots by email.

Further amendments in all these Subchapters within Chapter 30 are necessary to correct numerous scrivener's errors that occurred when prior amendments were added to the Code and overstricken text in said amendments was deleted.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 7. ABSENTEE VOTING BOARDS

230:30-7-6. Scheduling Absentee Voting Boards for an election

(a) Notification of Absentee Voting Board members. At least ten days before the election, the Secretary of the County Election Board shall notify the members of one or more Absentee Voting Boards of the day or days the services of the Absentee Voting Board will be required. The Secretary also shall request the members of the Absentee Voting Board to meet on Tuesday before the election to make plans for their work.

(b) Scheduling the nursing home Absentee Voting Board. On Tuesday before the election, the Secretary shall work with the Absentee Voting Board to schedule visits to each affected nursing home or veteran center. Visits must be scheduled on Thursday, Friday, Saturday or Monday immediately preceding the election. [26:14-115(1)] Visits shall be planned to all nursing homes or veteran centers in as few days as possible, preferably in a single day. The Secretary shall consult the administrator of each affected nursing home or veteran center to schedule a time that will be convenient for the Absentee Voting Board to visit.

(c) Scheduling the in-person Absentee Voting Board. An Absentee Voting Board is required to be on duty at the in-person absentee polling place from 8 a.m. to 6 p.m. on ~~Friday and Monday~~Thursday and Friday immediately preceding all elections and also from ~~8 a.m. to 1 p.m.~~9 a.m. to 2 p.m. on Saturday immediately preceding state and federal elections. [26:14-115.4]

(d) Scheduling an in-person Absentee Voting Board for a second in-person absentee polling place. If the county meets the statutory requirements for a remote in-person absentee polling place, in addition to the in-person absentee polling place located at the County Election Board office, a second in-person Absentee Voting Board shall be scheduled. The Absentee Voting Board assigned to the remote early in-person absentee polling place shall be on duty on the same days and hours outlined in (c) of this Section.

(e) Notifying Sheriff of in-person absentee voting. The Secretary shall notify the County Sheriff of the dates for in-person absentee voting for an election and shall arrange for the Sheriff to provide security for the memory pack and the voted ballots as outlined in 230:30-7-11.3. In the event a secondary in-person absentee polling place is designated in the County, the Secretary also shall notify the Sheriff of the location and arrange for the Sheriff to provide security for the election results storage device and voted ballots from that location. See 230:30-7-11.3.

230:30-7-9. Procedure for the nursing home Absentee Voting Board

(a) On the day scheduled for the Absentee Voting Board to visit nursing homes and veteran centers, the Board shall meet with the Secretary of the County Election Board at the County Election Board office. The members shall sign the Absentee Voting Board Record. The ballot box shall be prepared as outlined in 230:30-7-8 and issued to the nursing home Absentee Voting Board members. Adequate supplies and ballots shall be provided to anticipate voter assistance requirements and spoiled ballots. Precautions shall be taken to insure accounting for each ballot. The Secretary shall instruct the Absentee Voting Board as to the type of ballots each voter shall receive in case a voter spoils a ballot and a new ballot must be issued.

(b) The Absentee Voting Board shall observe the following procedure:

(1) The two members of the Absentee Voting Board shall travel together in one automobile, taking all necessary forms and supplies.

(2) Upon arrival at a nursing home or veteran center, the Absentee Voting Board shall make arrangements for those incapacitated voters listed on the Absentee Voting Board Record to vote. Only those persons whose names are on the Absentee Voting Board Record shall be permitted to vote. If the message "Confirm Address" or "Insufficient Address" appears on the Absentee Voting Board Record, the Absentee Voting Board members shall give the voter

a copy of the Address Information Requested handout and shall ask the voter to complete an Oklahoma Voter Registration Application form.

(3) The voter must mark his ballots with a black or blue ballpoint pen in the presence of the Absentee Voting Board, but in such a manner as to make it impossible for anyone but the voter to tell how the ballots are marked. [26:14-115(3)]

(4) ~~Insofar as is possible, the~~As far as possible, the voting procedure shall be the same as if the voter were casting ~~his~~a ballot in person at a precinct polling place on election day. [26:14-115(3)] This includes providing privacy and offering assistance, as provided by law, to persons who are unable to mark their own ballots due to physical or visual disabilities or illiteracy. The voter assistance procedures outlined in the ~~Precinct~~ Election Day Reference and Problem Solver section of the Precinct Official Notebook shall be followed. However, the Voter Assistance Form shall not be used. The person who marks the voter's ballot shall complete and sign the "Assistant's Oath" on the absentee affidavit envelope. [26:14-113.2]

(5) While a voter may receive assistance, only the voter ~~himself~~ may determine how the ballots are to be marked. If the voter is unable to instruct the person providing assistance, the voter shall not be permitted to vote. If necessary, the voter also may receive assistance to complete the Oklahoma Voter Registration Application.

(6) The procedure outlined in the ~~Precinct~~ Election Day Reference and Problem Solver section of the Precinct Official Notebook shall be followed if a voter spoils a ballot. The Spoiled Ballot Affidavit shall be used as required.

(7) When the voter has marked ~~his~~the ballots, ~~he~~the voter shall fold ~~them~~ and seal them in the white ballots envelope. [26:14-115(4)] ~~He~~The voter then shall seal the white ballots envelope inside the pink affidavit envelope. [26:14-115(4)]

(8) The voter then shall complete and sign the affidavit. [26:14-115(4)] The voter's signature must be witnessed by both members of the Absentee Voting Board. [26:14-115(4)] The Absentee Voting Board members shall sign the affidavit in the space for witnesses but shall not be required to provide their addresses.

(9) The affidavit envelope then shall be placed in the outer envelope and sealed. [26:14-115(5)]

(10) Each outer envelope containing absentee ballots immediately shall be placed in the absentee ballot box.

(11) ~~A~~ If a voter listed on the Absentee Voting Board Record is present, a member of the Absentee Voting Board shall check either the ~~"Did Vote"~~"Voted" column or the "Did Not Vote" column, as appropriate. If the voter is not present at the time of the Absentee Voting Board visit or moved back home ot to another nursing home, check "Undeliverable." If the voter has died, check "Undeliverable" and follow the instructions in (c) of this section.

(12) All Oklahoma Voter Registration Application forms completed by voters to update their voter registration information shall be placed with other voting supplies for return to the County Election Board office.

(13) When the Absentee Voting Board has completed its visit to each nursing home or veteran center scheduled for that particular day, the members shall return to the County Election Board office and leave the ballot box in the custody of the Secretary. [26:14-115(5)] The Absentee Voting Board members shall account for all supplies and unused ballots. The ballot box shall be removed from the County Election Board office only when the Absentee Voting Board is performing its duties. The ballot box, once locked, shall not be unlocked again until it is time for the County Election Board members to remove the outer envelopes. See 230:30-11-2.

(c) In the event that members of the nursing home Absentee Voting Board learn that a nursing home voter listed on the Absentee Voting Board Record has died, the Absentee Voting Board members shall ask the nursing home administrator to fill out and sign a ~~Notification of County Resident's Death form~~ Request to Cancel Registration of Deceased Voter forms. One member of the Absentee Voting Board may witness the administrator's signature, or the administrator may sign the form in the presence of a Notary Public. The Absentee Voting Board shall return the signed form to the County Election Board Secretary along with the ballot box and supplies when their duties are concluded.

230:30-7-11. Procedure for in-person Absentee Voting Board to receive applications and issue ballots

The Absentee Voting Board members shall observe the following procedure when a voter appears and requests an in-person absentee ballot.

(1) Ask the voter to fill out and sign a green Application for In-Person Absentee Ballots form.

(2) ~~Check the voter's registration information and registration status using a computer with access to the Internet and the MESA software or the Central File as instructed by the County Election Board Secretary. See 230:30-7-14. If the applicant's voter registration information cannot be located in MESA, check the Central File, or ask a County Election Board staff member to do so. If the applicant's voter registration cannot be verified in either MESA or the Central File, issue a provisional ballot to the applicant. See 230:30-7-15.~~

~~(3) If the voter tells you that his or her residence address has changed, give the voter an Oklahoma Voter Registration Application and ask the voter to fill it out and sign it.~~

~~(4) If the "Voter Status" field indicates the voter is inactive, or if the "SD" (school district) or "MU" (municipality) field on the MESA screen is blank, give the voter a copy of the Address Information Requested handout and an Oklahoma Voter Registration Application form. Ask the voter to use the form to update his or her voter registration information. The voter may either return the voter registration application form to you or mail it at a later time.~~

~~(5) Ask the voter for proof of identity.~~Take the completed application form and enter the voter's name and

birth date in MESA to locate the voter's registration information.

(A) If the voter's information cannot be located in MESA, immediately ask a County Election Board staff member for assistance to verify the voter's registration using the Central File.

(B) If the voter's registration cannot be verified in MESA or in the Central File, offer the voter a provisional ballot.

(3) Ask the voter for proof of identity and~~.~~

~~(A) Check~~ check to see that the voter's name on the proof of identity document substantially conforms to the voter's name in MESA. ~~and that,~~If the proof of identity has an expiration date, verify that the expiration date is later than election day. ~~(Exception: a state identification card issued to a person 65 years of age or older does not have an expiration date but is valid proof of identity under the law.)~~ All documents used for proof of identity, except the voter identification card or temporary voter identification document issued by the County Election Board, must include a photograph of the voter.

(~~B~~A) The voter may present any of the following documents as proof of identity.

(i) a valid Oklahoma driver license

(ii) a voter identification card issued by the County Election Board

(iii) a temporary voter identification document issued by the County Election Board

(iv) a state identification card

(v) a United States passport

(vi) a United States military identification, including an identification card issued by a branch of the armed services to a retired member or such armed service.

(vii) any other such document issued by the State of Oklahoma, the United States government, or a federally recognized tribal government which includes the person's name, a photograph of the person, and an expiration date that is later than election day.

(~~C~~B) Indicate that the voter presented valid proof of identity by writing "YES" in the space provided in the "For Absentee Voting Board Use" section of the green Application for In-Person Absentee Ballot.

(~~D~~C) If the voter's proof of identity is not valid, if the voter has no proof of identity, or if the voter refuses to provide proof of identity, offer the voter a provisional ballot. See 230:30-7-15 and 230:35-5-177. If the voter refuses the offer of a provisional ballot, record the incident on the Provisional Ballot Refusal form.

(~~6~~4) If the "Status" field in the Voter/District Information area on screen indicates the voter is inactive, if the "School" or "Municipality" fields on are blank, or if the voter tells you that his or her residence address has changed, give the voter a copy of the Address Information Requested handout and an Oklahoma Voter Registration Application form.

(5) If the words "Absentee Ballot Requested" appear in red in the Voter/District Information area on the screen, print the voter's name and enter the voter's precinct number on the pink Absentee Voter Affidavit. Tell the voter to read the oath and to sign the Affidavit.

(6) If information appears in red at the bottom of the window indicating that the voter has returned an absentee ballot for this election by mail or has voted on an earlier day of in-person absentee voting, do not issue a regular absentee ballot. Follow the instructions in 230:30-7-15 to offer and issue a provisional ballot.

(7) Print a label and apply it to the application form in the space provided "For Office Use Only."

(8) Issue the ballots indicated by the voter's registration information in MESA ~~or in the Central File~~ and give the voter a black ballpoint pen. [26:14-115.4]

(9) Offer the voter a secrecy folder. Use a sample ballot to demonstrate ~~a valid marking and~~ use of the secrecy folder, if necessary.

(10) Direct the voter to a voting booth to mark the ballots.

(11) Provide assistance as outlined in the ~~Precinct~~ Election Day Reference and Problem Solver section of the Precinct Official Notebook to voters who need help reading and/or marking their ballots. Disregard references to the Precinct Registry. Use the Voter Assistance Form.

(12) Follow the procedure outlined in the ~~Precinct~~Election Day Reference and Problem Solver section of the Precinct Official Notebook if a voter spoils a ballot. Use the Spoiled Ballot Affidavit.

(13) Tell the voter to insert the voted ballot in the voting device. [26:14-115.4(4)]

(14) Take the ballpoint pen and the secrecy folder, if used, back from the voter.

(15) If the voting device returns the voter's ballot, ask the voter ~~to wait until the voting device message prints. Follow the appropriate instructions in the voting device instructions section of the Precinct Official Notebook. Ask County Election Board personnel for help if necessary~~ read the message and instructions on the voting device console screen. Do not look at the voter's ballot unless the voter asks you to do so. Follow the appropriate instructions in the Election Day Reference and Problem Solver in the Precinct Official Notebook as necessary to help the voter. Ask County Election Board personnel for assistance if necessary.

230:30-7-12. Processing applications for in-person absentee ballots in MESA

(a) The Secretary shall be responsible for entering the application and ~~voting information of~~ and credit for voting for in-person absentee voters ~~into~~in MESA.~~as soon as possible following the conclusion of the in-person absentee voting period~~. ~~The information recorded on the Application for In-Person Absentee Ballot forms and the Absentee Voting Board Record for In-Person Absentee Ballots shall be entered~~

~~into MESA. If the in-person Absentee Voting Board did not verify voter status while receiving applications as outlined in 230:30-7-14, the Secretary shall request and print the Reinstated In-Person Absentee Voter mailing labels. (Labels for insufficient address voters are also included.) The Secretary shall prepare the address update request letter and shall mail it with an Oklahoma Voter Registration Application form to each voter for whom a label printed.~~ The Secretary may choose any one of the following options for processing applications from in-person absentee voters and giving credit for voting during in-person absentee voting.

(1) A County Election Board employee may use the employee's own MESA account to verify voter registration, determine the ballots the voter is eligible to receive, and to give credit for voting.

(2) The Secretary of the County Election Board may allow an in-person Absentee Voting Board member to give credit for voting to each in-person absentee voter in MESA. A feature in MESA must be enabled by the State Election Board for the county in order for this option to be used. See (b) of this section for more information.

(3) An Absentee Voting Board member may use the MESA Absentee Voting Board account to verify voter registration and determine the ballots the voter is eligible to receive. The member prints an application label and affixes it to the voter's green Application for In-Person Absentee Ballot form. A barcode on the application label will be scanned by a County Election Board employee at a later time to give credit for voting. (A single-label printer loaded with $1\frac{1}{2}$-inch by $3\frac{1}{2}$-inch labels must be attached to the computer used by the Absentee Voting Board to print the application label.

(4) An Absentee Voting Board member may use the MESA Absentee Voting Board account to verify voter registration and to determine the ballots the voter is eligible to receive. The member does not print an application label. One of the Absentee Voting Board members writes the appropriate ballot information one each voter's green Application for In-Person Absentee Ballot form. County Election Board personnel gives credit for voting manually at a later time. The option is not recommended for routine use, but only when MESA is unavailable to the Absentee Voting Board members due to lack of power or secure internet connectivity.

(b) The Secretary of the County Election Board may make a written request to the State Election Board Help Desk to activate a feature that enables an Absentee Voting Board member to give credit for voting during in-person absentee voting at the same time a voter's registration is verified.

230:30-7-13. In-person absentee voting procedure for uniformed services or overseas voter

If voter registration information for an in-person absentee ballot applicant cannot be found in the Central File or in MESA and that applicant informs the Absentee Voting Board members that he or she is on leave or has recently been honorably discharged from the uniformed services of the United States or has recently been terminated in civilian service or employment overseas, the applicant may be entitled to vote without being registered. [26:14-121] The spouse or dependent of such a person also is entitled to vote a provisional ballot without being registered. [26:14-121] Refer to ~~the Uniformed Services or Overseas Voter Precinct Problem Solver section of the Precinct Official Notebook (230:35-5-114)~~ 230:35-5-114 and follow those instructions to assist this applicant to cast a provisional ballot. Ask a County Election Board employee for help to determine the correct ~~absenteeballot~~ ballots to issue to the voter, if necessary.

230:30-7-14.1. Closing the in-person absentee polling place

At the end of each day of in-person absentee voting, the Absentee Voting Board members observe the following procedure.

(1) Fill out the In-Person Absentee Ballot Accounting Form.

(2) Sign the Absentee Voting Board Record for In-Person Absentee Ballots.

(3) Suspend the polls on the voting device and print three copies of the Detail Report.

(4) Turn off the voting device and unplug it. Break the seal on the election results storage device compartment cover and remove the ~~the~~ storage device. Place the election results storage device inside ~~the padded bag or~~ an envelope.

(5) Place ~~the padded bag or envelope and~~ the broken seal from the ~~memory pack door~~ election results storage device compartment cover inside ~~an~~the envelope. Seal the envelope. Both members of the Absentee Voting Board sign the sealed envelope flap.

(6) Unlock and open the emergency compartment door of the ballot box. Release the security latch on the underside of the voting device. Close and lock the voting device case. Lift the voting device off the ballot box and set it aside.

(7) Unlock and open the lower front door of the ballot box. Secure the door open with the bungee cord. Remove the counted ballots from the ballot box. Place them inside a ballot transfer box. Using a flashlight, carefully inspect the ballot box to verify that all ballots have been removed.

(8) Seal the ballot transfer box with the long white State Election Board seal. Both members of the Absentee Voting Board shall sign and date the seal.

(9) Give the sealed envelope containing the election results storage device and the sealed ballot transfer box to the County Sheriff.

(10) Return the voting device and ballot box to the County Election Board office or other secure location as instructed by the Secretary.

(11) Return the unused ballots, all filled out absentee ballot and voter registration application forms, and all other supplies to the County Election Board office as instructed by the Secretary.

230:30-7-14.2. Secretary's procedure at end of in-person absentee voting day

At the end of each day of in-person absentee voting, the Secretary shall observe the following procedure.

(1) Receive voting device, ballot box, unused ballots, all filled out absentee ballot and voter registration application forms, and all other supplies from the Absentee Voting Board members. Put the ~~the~~ ballots and supplies in a secure place.

(2) Make one copy of the day's Absentee Voting Board Record for In-Person Absentee Ballots available ~~to the public~~ for public inspection in the County Election Board office.

(3) Store the other copy of the Absentee Voting Board Record for In-Person Absentee Ballots with the filled out Applications for In-Person Absentee Ballots forms until the applications ~~and voting~~and voter credit information ~~can be~~ entered ~~into~~in MESA can be examined for errors.

(4) Check to see that the voting device and ballot box are properly secured.

(5) Stamp the received date on all voter registration application forms received by the in-person Absentee Voting Board. As soon as possible, process the voter registration applications and enter in MESA. See 230:15-9-19 through 230:15-9-22 and 230:15-9-24.

230:30-7-15. Procedure for provisional voting during in-person absentee voting

(a) An in-person absentee voter may cast a provisional ballot under the same circumstances as a voter at a precinct polling place on election day. An in-person absentee voter also may cast a provisional ballot if MESA indicates that the voter has received credit for voting in the same election by absentee ballot, either by mail or on another day of in-person absentee voting, and the voter denies having already voted in the election. The Absentee Voting Board members shall follow the steps in (b) of this Section and the procedure outlined in 230:35-5-177 to issue a provisional ballot to an in-person absentee voter.

(b) When a provisional ballot must be issued to an in-person absentee voter, follow these steps in addition to the procedure in 230:35-5-177.

(1) Indicate on the Application for In-Person Absentee Ballots form that the voter will cast a provisional ballot. Do not allow the voter to sign the Absentee Voting Board Record.

(2) If necessary, ask a County Election Board staff member to help determine the correct ballot style for this voter. Prepare a Provisional Ballot Voucher listing the correct ballots for this voter.

(3) Follow the steps outlined in 230:35-5-177.

(c) At the end of each day of in-person absentee voting, the Absentee Voting Board members seal the orange bag with a blue plastic seal and give it to the Sheriff along with the ~~in-person absentee memory pack~~ election results storage medium from the voting device. On the morning of the next day of in-person absentee voting, the Sheriff returns the election results storage medium and the orange bag to the Absentee Voting Board members along with the memory pack. If another voter casts a provisional ballot, the Absentee Voting Board members cut the blue plastic seal on the bag in order to place the new provisional ballot affidavit envelope in the bag and reseal the bag at the end of the day. It is not necessary to remove the seal from the orange bag unless another provisional ballot must be placed inside it.

(d) As an alternative to this procedure, a separate orange provisional ballot bag may be used on each day of voting.

(e) On election day, the Sheriff returns the sealed orange bag or bags and the ~~memory pack~~election results storage medium to the Secretary when it is time to begin counting absentee ballots. The Secretary secures the orange bag in the County Election Board office along with the orange bags from each precinct polling place until verification of provisional ballots begins the following day.

SUBCHAPTER 9. PROCESSING APPLICATIONS

230:30-9-8. Processing first responder/emergency worker emergency absentee applications, issuing ballots, and receiving voted ballots

(a) **Who may apply.** First responders and emergency workers who are deployed to assist with rescue, recovery, and/or relief efforts in the wake of a declared natural disaster or a declared state of emergency within ten days of an election may apply for an emergency absentee ballot. Such requests from first responders and emergency workers may be received and processed up to and even on election day, as long as the voted ballot is received by the County Election Board no later than 7 p.m. on election day.

(b) **Processing emergency absentee ballot applications and issuing ballots.** When a first responder or emergency worker is deployed within ten days of an election to assist with rescue, recovery, and/or relief efforts in the wake of a declared natural disaster or a declared state of emergency and requests an emergency absentee ballot, the Secretary of the County Election Board shall ensure the following procedure is observed.

(1) Give the voter a copy of the Application for Emergency Absentee Ballot - First Responders and Emergency Workers form. The form may be emailed or faxed to the voter or a copy may be printed in your office and given to the voter.

(2) Tell the voter to fill out the form and to provide all the requested information. The form must be signed and dated by the voter. Ask to see the voter's proof of identity. See 230:35-3-140 and 230:35-3-141.

(3) Upon receipt of the voter's completed and signed application, enter the application in MESA.

(4) Issue the appropriate absentee ballot or ballots and a standard/yellow absentee ballot packet and instructions to the voter. Make a notation on the outer envelope that this is an emergency absentee ballot.

(5) Tell the voter to fill out the affidavit envelope and to have his/her signature on the affidavit notarized. County Election Board personnel may not notarize the affidavit.

(6) Tell the voter that his or her voted ballot must be received by the County Election Board by 7 p.m. on the day of the election in order to be counted.

(c) **Returning voted emergency absentee ballots to the County Election Board.** First responders and emergency workers who apply for emergency absentee ballots as outlined in (a) and (b) of this Section have the options listed below for returning their voted absentee ballots to the County Election Board. The absentee ballot affidavit must be signed and notarized and must be sealed inside the appropriate absentee envelopes.

(1) The voter may return the voted ballot to the County Election Board office in person. If the voter returns his or her emergency absentee ballot in person, ask to see the voter's proof of identity.

(2) The voter may return the voted ballot by United States mail (including by USPS Express Mail™).

(3) The voter may return the voted ballot by a private delivery services (such as FedEx™) that provides delivery documentation.

(d) **Receiving voter emergency absentee ballots.** Upon receipt of an emergency absentee ballot in-person from the voter or by mail, follow the steps outlined below.

(1) Make the following notation on the outer envelope. "Emergency Absentee Ballot from First Responder/Emergency Worker received on (DATE) at (TIME)." Also note whether the ballot was received in person from the voter, by mail, or by private delivery service.

(2) Give the emergency voter credit for voting in MESA.

(3) Place the voted ballot, sealed inside the appropriate envelopes, in the absentee ballot box.

SUBCHAPTER 11. RECEIVING AND PROCESSING ABSENTEE BALLOTS

230:30-11-1.1. Receiving hand-delivered absentee ballots from voters

(a) Beginning January 1, 2017, voters who submit standard (no excuse) absentee ballot applications and receive standard (yellow) affidavits are entitled to return their own voted absentee ballots to the County Election Board office in person through the end of regular office hours on the day preceding the election.

(1) The absentee ballot and materials must be sealed inside the Return Envelope provided in the voter's absentee ballot packet. The printed return address label on the envelope must indicate "Type: ~~ST~~ S."

(2) The voter must provide proof of identity that meets the same requirements as the proof of identity required during in-person absentee voting and at the precinct polling place on election day. See ~~230:35-5-58(a)(2)(A)~~ 230:35-5-55(a)(2)(A). A voter who does not have or who declines to provide appropriate proof of identity shall be instructed to mail the envelope to the County Election Board.

(b) County Election Board personnel shall follow these steps to receive a hand-delivered absentee ballot. Do not take the absentee envelope from the voter until you have seen proof of identity.

(~~3~~ 1) Verify with the proof of identity document that the person is the voter whose name is on the printed return address label on the Return Envelope.

(~~4~~ 2) Write or stamp the received date on the front of the Return Envelope. Note on the front of the envelope that the ballot was delivered in person by the voter.

(~~5~~ 3) Record receipt of the absentee ballot in MESA by scanning the barcode on the return address label, by entering the ballot ID number printed on the return address label, or by manually locating the voter's absentee ballot information.

(~~6~~ 4) Immediately place the sealed return envelope in the same locked ballot box used to secure absentee ballots returned by mail.

(~~b~~ c) Absentee ballots cannot be hand-delivered to the County Election Board office by a voter who applied as a physically incapacitated voter (PI) or as a caregiver for an incapacitated person (CI) voter. Absentee ballots cannot be hand-delivered to the County Election Board office by a voter who applied as a uniformed services (US) or overseas voter (OV). Absentee ballots cannot be hand-delivered to the County Election Board office when the office is not open. Any absentee ballot left at the County Election Board office when the office is not open shall be rejected and shall not be counted.

(~~c~~ d) In the event that a voter who submitted a standard application for absentee ballots appears at the County Election Board office to hand-deliver an absentee ballot that is not properly sealed inside the envelope set mailed to the voter with the absentee ballot, the Secretary may provide a new set of envelopes - a ballot secrecy envelope, a standard (yellow) affidavit envelope, and a Return Envelope - and a new return address label to the voter. If only the outer envelope is missing, provide an outer envelope and either print a new ballot return label or write the appropriate ballot identification number listed in MESA on the new outer envelope. If a new envelope set is provided, instruct the ~~The~~ voter ~~shall be instructed~~ to have the voter's signature on the affidavit envelope notarized and to return the properly sealed envelope set in person or to mail it.

230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters

(a) All uniformed services and overseas voters are entitled to fax their voted absentee ballot to the State Election Board or to the County Election Board that issued the ballot. Uniformed services and overseas voters who request a faxed ballot for federal offices as described in 230:30-9-5.1 must return said ballot by fax. Uniformed services and overseas voters may fax the federal write-in absentee ballot described in 230:30-13-1 through 230:30-13-4 at any time. Uniformed services and overseas voters who request that ballots be transmitted by electronic mail must return said ballot either by regular mail or by fax.

(b) A uniformed services or overseas voter described in (a) of this section may fax a copy of the voted ballot either to the State Election Board or to the County Election Board that issued the ballot in addition to mailing the original ballot to the issuing County Election Board. A fax cover sheet for this purpose may be downloaded and printed from the Federal Voting Assistance Program (FVAP) website: www.fvap.gov. Uniformed services voters may obtain copies of the fax cover sheet from the Voting Service Officers in their units. Overseas voters may obtain the cover sheet at United States embassies, consulates, and military installations. A voter who chooses to fax a voted ballot must sign a Secret Ballot Waiver and transmit it with the ballot. All faxed ballots must be received by the State Election Board or by the County Election Board no later than 7 p.m. (United States Central Time Zone) on the date of the election in order for the ballot to be counted. In the event that a voter's regular ballot is received by mail at the County Election Board prior to 7 p.m. on election day, only the voter's regular ballot shall be counted. The voter shall follow these instructions to fax a voted ballot to the State Election Board or to the County Election Board.

(1) After marking the ballot, make a photocopy of the ballot, reduced as necessary to fit an 8 and 1/2" by 11" page. Do not alter the original ballot.

(2) Fill out and sign the affidavit envelope included with the mail absentee ballot.

(3) Fill out the fax cover sheet.

(4) Fax the cover sheet, affidavit, and voted ballot to one of the secure numbers provided by the FVAP for ballot transmission.

(5) Immediately mail the voted original ballot to the County Election Board. Follow the instructions included with the ballot.

(c) The Secretary of the State Election Board shall assign one or more employees to receive and process voted ballots faxed by uniformed services and overseas voters. Upon receipt by fax of a voted ballot, the assigned employees shall take the following steps to transmit the ballot and related information to the appropriate County Election Board Secretary.

(1) Verify that each voted ballot is accompanied by a fax cover sheet that includes the following information:

(A) the voter's name

(B) the voter's county of residence in Oklahoma

(C) the voter's signature on the Secret Ballot Waiver

(D) the voter's signed Affidavit if the faxed ballot is a copy of the voter's regular mail absentee ballot

(2) Stamp the fax cover sheet with the date and time it was received and immediately transmit both the cover sheet and the ballot to the appropriate County Election Board Secretary. If the Secretary does not have a fax machine in the office, notify the Secretary that a voted absentee ballot is being transmitted.

(3) In the event that a voted ballot is received without an appropriate identifying cover sheet and/or without the voter's signature on the Secret Ballot Waiver, the ballot shall be set aside in a secure place. If possible, immediately send a notice that the transmission was incomplete and that the ballot cannot be counted. Instruct the voter to send both the cover sheet and the ballot again. Document the receipt of the unidentified ballot and then destroy it.

(4) In the event that an identifying cover sheet is received without the voted ballot, set the cover sheet aside in a secure place. If possible, immediately send notice that the transmission was incomplete and the ballot was not received. Instruct the voter to send both the cover sheet and the ballot again. If the voter does not send the cover sheet and ballot again by 7 p.m. in the United States Central Time Zone on election day, document the receipt of the cover sheet without the ballot, and notify the County Election Board Secretary that the voter attempted to return the ballot but the ballot was not received.

(5) Ballots received by fax after 7 p.m. on election day in Oklahoma shall not be counted.

(6) Mail the original faxed ballot and cover sheet to the appropriate County Election Board.

(d) Upon receipt by fax of a voted ballot from the State Election Board, the Secretary of the County Election Board shall take the following steps.

(1) Attach the fax cover sheet to the ballot with a paper clip, fold the sheets in half and place in the locked absentee ballot box. If the ballot is received from the State Election Board on election day after the absentee ballot box has been opened, place the faxed ballot in a secure place until the County Election Board members are ready to count the ballot.

(2) Enter the date received in the voter's absentee application information in ~~OEMS.~~MESA.

(3) After 7 p.m. on election day, the members of the County Election Board shall mark a substitute ballot and count it as instructed in 230:30-19-6.

(e) Upon receipt by fax of a voted ballot from a uniformed services voter or an overseas voter, the Secretary of the County Election Board shall follow the same steps outlined in (c) of this section.

(f) A voter who faxes a voted ballot to the State Election Board or to a County Election Board as described in this section ~~must~~ is instructed to sign a Secret Ballot Waiver. The Secret Ballot Waiver is part of the fax cover sheet provided by the FVAP on its website~~, and also is part of the fax cover sheet provided by the County Election Board to voters who ask for a federal office ballot to be faxed as outlined in 230:30-9-5.1.~~and to voters who receive their absentee ballots and balloting materials online through the OMOBO system. ~~However, if~~ If neither of these cover sheets is available, the voter ~~must~~may include the following signed statement among the materials faxed with the voted ballot. "I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot." This statement ~~must~~ should be signed and dated by the voter. Failure of a voter to sign or to include a secret ballot waiver shall not be grounds for rejecting the voter's absentee ballot.

(g) Oklahoma law does not allow uniformed services or overseas voters to return voted ballots to the County Election Board by electronic mail. Ballots from these voters may be returned only as outlined in this section.

SUBCHAPTER 19. COUNTING THE BALLOTS

PART 1. COUNTING ABSENTEE BALLOTS ON ELECTION DAY

230:30-19-4. Procedure for counting absentee ballots on election day

(a) On ~~the day of the~~ election day at such time as the Secretary of the County Election Board may prescribe, the County Election Board shall meet to count absentee ballots. The following procedure shall be observed to count ballots received by mail or private delivery service.

(1) Outer envelopes first shall be removed and the affidavits examined as outlined in 230:30-11-2.

(2) The properly executed affidavit envelopes shall be opened by the County Election Board, and the ballot envelopes shall be removed as outlined in 230:30-11-3. [26:14-125(A)(1)]

(3) The unopened ballot envelopes shall be placed inside a ballot box. [26:14-125(A)(2)] The ballot box shall be shaken to mix the ballot envelopes. [26:14-125(A)(3)]

(4) The ballot envelopes shall be removed from the box. [26:14-125(A)(3)] The ballot envelopes shall be opened, and the ~~ballot cards~~ ballots removed. [26:14-125(A)(3)] If an Oklahoma Voter Registration Application form has been enclosed by an inactive voter inside the ballot envelope, remove it and set it aside to be processed later. Proceed to the next step.

(5) The Secretary shall assign an employee of the County Election Board to each voting device or high-speed scanner to be used to count the absentee ballots. The County Election Board Chairman and Vice Chairman shall be present and shall observe the counting process.

(6) The person assigned to operate the voting device shall insert the absentee ~~ballot cards~~ ballots one at a time into the voting device until all absentee ballots received ~~to that point~~ have been counted. This procedure shall be repeated as necessary as additional absentee ballots are received until 7 p.m. The following factors shall be considered. Counties using high-speed scanners to count mail absentee ballots shall follow the specific instructions provided for operation of those machines to scan ballots and to resolve, if possible, any problems with ballots the scanner rejects.

(A) In no event shall fewer than 12 absentee ~~ballot cards~~ ballots be counted at any one time, unless fewer than 12 ~~ballot cards~~ ballots are received in total or after the first count is completed. [26:14-125(B)]

(B) If the voting device returns a ballot because of an overvote or other error made by the voter when marking the ballot, accept the ballot. See 230:35-5-162. [26:14-125(B)]

(C) In the event that a ballot is damaged or defaced, as outlined in 230:30-19-5(a), to the extent that it cannot be read and counted by the voting device, the procedure described in 230:30-19-5(b) shall be observed.

~~(D) If the first count of absentee ballots is completed prior to 7 p.m., the memory pack shall be removed from the voting device, placed inside the padded bag, and sealed inside a black lettered envelope. The person operating the voting device, the Chairman and the Vice Chairman each shall sign the envelope flap. The person operating the voting device shall indicate on the envelope flap the time the count was completed as follows: "Absentee ballot count ended at 5:20 p.m. 11/5/96." The envelope shall be placed in the Sheriff's custody until it is needed to count additional absentee ballots received before 7 p.m.~~

(7) In the event that the election results storage device in a voting device used during in-person absentee voting fails and results cannot be read into the tabulation computer, the ~~tabulation computer operator shall contact the State Election Board for instructions to access the~~ backup memory device in the voting device shall be removed and read into the tabulation computer. If~~, for any reason,~~ the backup memory device in the voting device cannot be accessed, an election night recount of all ballots cast on that voting device during in-person absentee voting shall be conducted as outlined in 230:35-3-85.1. If an election night recount of ballots cast during in-person absentee voting is required, the Secretary shall obtain the sealed ballot transfer cases containing voted absentee ballots from the Sheriff before beginning the recount procedure. [26:14-115.4(B)(7)]

(8) As soon as possible after 7 p.m. and after all absentee ballots received prior to 7 p.m. have been processed through the voting device, the election results storage device shall be removed from each voting device or high-speed scanner used to count mail and nursing home absentee ballots and the election results storage device or devices used during in-person absentee voting shall be returned by the Sheriff.

(9) These election results storage devices shall be given to the tabulation computer operator to be read and tabulated as soon as possible after 7 p.m. The tabulation computer operator shall print a Cumulative Report and a Precinct Report from Tally immediately after reading and tabulating the election results for in-person absentee voting and for mail and nursing home absentee ballots. One copy of each report shall be posted on the door of the County Election Board office and additional copies shall be made available to the news media and other interested persons as requested.

(10) The person assigned to operate the voting device shall open the main compartment of the ballot box, remove the ballots, and place them inside a ballot transfer case. The ballot transfer case shall be sealed with a long white State Election Board seal and the seal shall be signed by the person who operated the voting device and by the County Election Board members.

(b) Federal write-in absentee ballots submitted by uniformed services and overseas voters, ballots issued ~~by electronic mail~~ to uniformed services and overseas voters online through the

OMOBO system, and all regular absentee ballots issued to these voters by mail and returned by fax ~~from uniformed services or overseas voters~~ shall be counted by following the procedure described in 230:30-19-6.

SUBCHAPTER 21. RECORDING ABSENTEE VOTING

230:30-21-1. List of absentee voter applications available

On Monday prior to the election the Secretary shall print a copy of the Absentee Voter List report compiled by MESA and shall make the report available for public inspection in the County Election Board office. [26:14-130] If additional applications for emergency incapacitated absentee ballots are received after the report is printed, a new copy shall be printed and ~~posted~~ made available.

[OAR Docket #19-703; filed 6-27-19]

TITLE 230. STATE ELECTION BOARD CHAPTER 35. ELECTION CONDUCT

[OAR Docket #19-704]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. County Election Board Responsibilities
Part 1. Before the Filing Period
230:35-3-3. Assembling precinct supplies [AMENDED]
Part 9. Distributing Supplies and Ballots
230:35-3-71. Voting device not issued to precinct polling place [AMENDED]
Part 13. After the Polls Close
230:35-3-84. Assembly line required for receiving returns and materials from Inspectors [AMENDED]
230:35-3-85.1. Election night recounts [AMENDED]
230:35-3-85.2. Addressing voting device printer failure, election results storage device failure and/or backup memory device failure [AMENDED]
230:35-3-87. Accumulating and verifying election results [AMENDED]
Part 17. Disposition of Materials
230:35-3-100. Disposing of Detail and Tally Reports [AMENDED]
230:35-3-101. Processing forms used on election day by Precinct Officials [AMENDED]
230:35-3-103. Disposing of supplies [AMENDED]
Part 19. Verifying and Counting Provisional Ballots
230:35-3-126. Criteria for verification of provisional ballot affidavit information [AMENDED]
230:35-3-131. Opening provisional ballot ~~affidavit~~secrecy envelopes and counting provisional ballots [AMENDED]
Subchapter 5. Instructions for Precinct Election Officials
Part 7. General Guidelines
230:35-5-38. Election results reported to news media [AMENDED]
Part 11. Processing the Voter
230:35-5-55. Routine for Judge [AMENDED]
Part 15. After the Polls Close
230:35-5-75.1. Obtaining Detail and Tally Report [AMENDED]
230:35-5-81. Inspector shall not leave [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107; Secretary of the State Election Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019 through March 22, 2019
PUBLIC HEARING:
March 22, 2019
ADOPTION:
March 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:

The amendments in Subchapter 3 concern multiple topics: supplies provided to Precinct Officials for use at election day polling places; instructions concerning issuing voting devices in certain circumstances; procedures for receiving the election returns and polling place supplies from Precinct Officials on election night; clarification of certain reasons, requirements, and details in the procedure for conducting election night recounts of ballots; correcting references to the names of the results report printed from a voting device; updating the title of a form used to cancel the registration of deceased voters; and remove cross-references to several Sections that were revoked in 2013 for duplication of statutory language and add references to the statutes quoted by the revoked rules.

In addition to these substantive amendments, we are correcting numerous scrivener's errors in both Subchapters that occurred when prior amendments were added to the Code and underscored and overstricken text included in the amendments was deleted.

The amendments concerning election day supplies for Precinct Officials are intended to eliminate the constant need to amend this section when a new item is added to precinct supplies, an obsolete item is removed, and when the title of a form or publication changes. This Section previously has been amended in 1992, 1993, 1995, 1999, 2000, 2005, 2006, 2007, 2008, 2013, and in 2016. The amendment this deletes the lists of supplies and materials and instead requires the Secretary of the State Election Board, according to Title 26, Sections 3-101, 3-112, 3-113, and 3-114, to provide a list of all required supplies, forms, publications, signs, and containers to be used at each polling place on every election day. Said list is known as the Precinct Check List and has been use in elections since the 1970s. It is now an electronic form available to County Election Board personnel through the MESA election management system. It can be updated quickly and easily when an item is changed or eliminated.

School districts often include a very small amount of territory in a particular precinct, but no voters are registered at addresses in that part of the precinct and no persons are known to reside within the district's boundaries in the precinct. When school districts calling elections that are not held on the same date as a federal, state, or county election have the option of closing the precinct and excluding it from the election or of closing the polling place on election day and providing only early in-person absentee voting and absentee by mail. Some such districts choose not to employ either of these options. When that happens, absentee ballots are available by mail and during early voting hours, and the polling place is open on election day.

When a polling place is open for this reason and no other elections including the same territory are being conducted on the same day, no one is registered within the boundaries of the entity holding the election, and no one is known to reside in the area, the County Election Board Secretary is authorized not to issue a voting device to the polling place on election day. Amendments to the procedure observed by the Secretary when a voting device is not issued are needed to clarify options for "closing" such precincts in the election results tabulation system so that all final reports printed from that system indicate that all precincts in the election are fully reported. This process has been a source of ongoing misunderstanding within the State Election Board election night support team and by various County Election Board Secretaries who choose to implement the "no voting device" option.

When the Hart InterCivic eScan A/T voting system was originally implemented in 2012, Precinct Officials were required to print two reports from the voting device after closing the polls at 7 p.m. At that time, there were two options on the device screen, each producing one of the two required reports. It was common error that Precinct Officials failed to print both reports. The State Election Board staff conveyed a request to system developers to update the device firmware to allow both reports to print at the push of a single button. Additional copies could be produced by pushing the same button again, until the required number of copies were printed. These changes were implemented prior to 2014 elections, and many but not all references to printing these reports in our rules were updated to indicate both reports print together in a single request. A few additional amendments this year are needed to correct all such references to device reports.

In a similar vein, several amendments update the titles of certain forms used by Precinct Officials at polling places on election day. The title of the form used to cancel the registration of a deceased voter, was changed in 2016 when three separate forms used to cancel registrations of deceased voters were combined into a single form. Several references to the form previously used only at polling places on election day are updated with the title of the combined form.

Two Sections concerning verification and processing of provisional ballots are amended to correct or to clarify instructions and to replace cross-references to revoked rules with appropriate statutory references.

In Subchapter 5, one section is amended to update a reference to retention of the voting device reports mentioned above, another is amended to correct the type of scriveners error described above.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 3. COUNTY ELECTION BOARD RESPONSIBILITIES

PART 1. BEFORE THE FILING PERIOD

230:35-3-3. Assembling precinct supplies

(a) Well in advance of any election, the Secretary shall assemble supplies for every precinct and shall pack them in an envelope, a box, a bag, a binder, or another container. The Secretary may use the Supply Envelope and the Supply Box provided by the State Election Board or any other adequate container. Each election supply container shall be labeled for the appropriate precinct. (Some materials cannot be included in the supplies until after ballots are printed.) The Secretary shall prepare and use a Precinct Check List for each precinct to verify that all necessary supplies are included.

(b) The following items shall be included in the election supplies for each precinct. The quantities listed are recommended minimum quantities.

(1) **Precinct Official Notebook.** One Precinct Official Notebook shall be provided for each election day polling place. The Precinct Official Notebook shall contain ~~containing~~ the Election Day ~~Manual for Precinct Officials~~ Reference and Problem Solver and forms needed by Precinct Officials on election day.

(2) **Forms, Checklists, and handouts.** In addition to the forms contained inside the Precinct Official Notebook, ~~the following~~ certain additional forms and handouts shall be included in the election supplies for each precinct. These items may be included inside the Precinct Official Notebook or in another notebook or container according to the preferences of the Secretary of the County Election Board. Each year, the Secretary of the State Election Board shall provide a list of all additional checklists, forms, and handouts to be used by Precinct Officials at all election day polling places.

~~(A) Address Information Requested handouts~~
~~(B) Independent Voter Information Card (in partisan primary elections only)~~
~~(C) Attention All Voters – Proof of Identity Required to Vote sign~~
~~(D) Attention Judge notice for proof of identity~~
~~(E) Ballot Accounting Form~~
~~(F) Closing the Polls checklist~~
~~(G) Oklahoma Voter Registration Application forms~~
~~(H) Procedure for Watchers~~
~~(I) Secrecy folders~~
~~(J) List of ballot codes~~
~~(K) Opening the Polls checklist~~
~~(L) Packing Supplies checklist~~
~~(M) Voter Registration Application checklist~~

(3) **Envelopes.** ~~One of each of the following~~ Several special envelopes shall be included in the election supplies for each precinct. Each year, the Secretary of the State Election Board shall provide a list of all special envelopes and appropriate instructions for their use.

~~(A) Envelope for Totals Tally Report~~
~~(B) Precinct Expense Claim Envelope~~
~~(C) Voting Device Key Envelope (and key chain with keys)~~

(4) **Signs and Maps.** ~~The following~~ Several specific signs and maps shall be included in the election supplies for each precinct. Each year, the Secretary of the State Election Board shall provide a list of all signs and maps needed at election day polling places and instructions for their use or display.

~~(A) One Attention Voter poster for each voting booth in the precinct~~
~~(B) One Oklahoma Election Procedures – Important Voter Information sign~~
~~(C) One Election Law Violations sign~~
~~(D) One Vote Here sign~~
~~(E) One Voter Eligibility – Municipal Elections~~
~~(F) One Voter Eligibility – School Elections~~
~~(G) Precinct Map – municipality~~
~~(H) Precinct Map – school districts~~
~~(I) Precinct Map – other entity~~

(5) **Other Supplies.** ~~The following additional~~ Other supplies, such as ballpoint pens, paper clips, rubber bands, scissors, and tape, shall be included in the election supplies for each precinct. Each year, the Secretary of

the State Election Board shall provide a list of additional supplies needed for all election day polling places.

~~(A) American flag~~

~~(B) Thirty black ballpoint pens~~

~~(C) One long white State Election Board seal for each ballot transfer box required for the precinct~~

~~(D) Official Exit Poll stickers, as needed~~

~~(E) Paper clips~~

~~(F) Magnifier~~

~~(G) Flashlight~~

~~(H) Rubber bands~~

~~(I) Scissors~~

~~(J) Tape~~

~~(K) Thumbtacks~~

(6) **Provisional voting supplies.** ~~The following provisional~~ Provisional voting supplies shall be included in the supplies for each ~~precinct~~ election day polling place. The Secretary of the State Election Board shall provide a list of all such supplies each year.

~~(A) Checklist for Provisional Voting Officer~~

~~(B) Provisional Voting Information handouts~~

~~(C) Provisional Ballot Voucher forms~~

~~(D) Oklahoma Provisional Ballot Affidavits~~

~~(E) Provisional Ballot Rosters~~

~~(F) Provisional Ballot Materials envelopes~~

~~(G) Provisional Ballot Bag~~

~~(H) plastic seal for provisional ballot bag~~

(7) **Precinct Registry, Voting Device, and ballots.** The Precinct Registry, voting device, and ballots are issued to the Inspector along with the appropriate election supplies for each ~~precinct~~ election day polling place. See 230:35-3-57 and 230:35-3-68.1.

PART 9. DISTRIBUTING SUPPLIES AND BALLOTS

230:35-3-71. Voting device not issued to precinct polling place

(a) The Secretary of the County Election Board shall have the authority not to issue a voting device to a precinct polling place on election day only when all of the following circumstances exist.

(1) Only one entity is holding an election in the precinct.

(2) Voter registration records indicate that there are no registered voters assigned to the entity in the precinct.

(3) ~~The County Election Board Secretary and entity officials believe that no one resides~~ No one is known to reside within the ~~entity's~~ boundaries of the entity holding the election in the precinct.

(4) The entity has not exercised its ~~option~~options either to close the precinct or to close only the polling place and to provide only absentee ballots for the election. See only

(b) The Precinct Election Board shall be assigned to the precinct polling place on election day. The Inspector shall receive appropriate precinct supplies, which shall include ballots, a Ballot Accounting Form, provisional voting supplies, and a copy of the special instructions for Precinct Officials outlined in (f) of this section. Contact the State Election Board office for the Provisional Ballots Cast form and include at least two copies of it in the precinct supplies. A voting device shall not be issued for the ~~precinct~~ polling place.

(c) In the event that a voter appears at the polling place on election day and claims to be eligible to vote in the election ~~being held~~, Precinct Officials shall issue a provisional ballot to the voter according to the procedure outlined in 230:35-5-177.

(d) At 7 p.m., the Inspector shall indicate the number of provisional ballots, if any, cast on each copy of the Provisional Ballots Cast sheet included in the precinct supplies. The Precinct Officials each shall sign the copies. The copies shall be distributed as follows.

(1) One copy shall be posted on the polling place door.

(2) One copy shall be placed inside the ballot transfer box.

(3) One copy shall be placed inside the clear plastic sleeve on the orange Provisional Ballot Bag.

(e) At the County Election Board office ~~on election night, in the presence of the other County Election Board members, the Secretary shall observe the following procedure. These tasks may be completed prior to 7 p.m.~~, the Secretary shall cause one of the following actions to occur prior to 7 p.m. on election day.

(1) ~~Prepare a voting device for the precinct to which a voting device was not issued, open the polls on that voting device, print the Zero Report, and then close the polls on the voting device and print the Detail Report and the Tally Report.~~ Program voting devices in the County Election Board office with the election day polling place ID number for each precinct with no polling place open or with no voting device issued to an open polling place on election day.

(A) Prior to 7 p.m. on election day, open the polls on each such voting device.

(B) Immediately after 7 p.m., close the polls on each voting device and print at least two sets of voting device reports.

(C) Remove the election results storage devices from each voting device, and give them to the tabulation computer operator to be read as soon as all absentee results have been read and tabulated.

(2) ~~Tear off the voting device tape, which includes the Zero Report, , the Detail Report, and the Tally Report. The Secretary and the other two Board members shall sign the Tally Report in the spaces indicated for the Inspector, Judge, and Clerk. Set this original voting device tape aside in a secure place. Print at least one additional copy of the of each report to make available for public inspection after 7~~ As an alternative to programming several voting devices, the Secretary may choose to program a single voting device with the county vote center polling place ID number.

(A) Follow the same steps outlined in (1) (A) and (B) of this subsection.

(~~3~~B) Remove the election results storage device from the voter center voting device. ~~See 230:35-3-85.3. Give the storage device to the~~

~~tabulation computer operator to be read and tabulated after 7 p.m.~~ Place the election results storage device in a secure place until all other results storage devices from all voting devices used to count absentee ballots and from all other open precincts have been received, read and tabulated.

(C) Verify that any necessary election night recounts are completed and that all other election results have been read and tabulated.

(D) Read and tabulate the results storage device removed earlier from the voter center voting device.

(3) The options outlined in (1) and (2) of this subsection will cause all precincts involved in the election to appear fully reported on all reports from the tabulation system, from MESA, and on the State Election Board's election results reporting website.

(f) Provide a printed copy of the following instructions to Precinct Officials for use on election day when a voting device is not issued to a precinct polling place.

(1) Although the polling place must be open for today's election, County Election Board records indicate that there are no voters in this precinct eligible to participate in the election. Therefore, a voting device has not been issued for this polling place.

(2) In the event that a voter appears and claims to be eligible to vote in the election today, issue a provisional ballot to the voter following the provisional voting procedure in 230:35-5-177. Indicate either that the voter's name does not appear in the Precinct Registry or that the voter disputes the school district, technology center district, or municipal assignment indicated in the Precinct Registry.

(3) At 7 p.m., the Inspector shall indicate the number of provisional ballots cast, if any, on each copy of the Provisional Ballots Cast sheet included in the precinct supplies. The Precinct Officials each shall sign all the copies. The copies shall be distributed as follows:

(A) One copy shall be posted on the polling place door.

(B) One copy shall be placed inside the ballot transfer box.

(C) One copy shall be placed inside the clear plastic sleeve on the orange Provisional Ballot Bag.

(4) If a provisional ballot is cast, follow the instructions in 230:35-5-75.3(g) to secure the orange Provisional Ballot Bag for return to the County Election Board office.

(5) Complete the Ballot Accounting Form and pack the ballots as outlined in 230:35-5-75.3. Pack all remaining supplies as outlined in 230:35-5-76.

PART 13. AFTER THE POLLS CLOSE

230:35-3-84. Assembly line required for receiving returns and materials from Inspectors

Before the first Inspector arrives, an assembly line shall be established for receiving the returns. The Chairman and Vice Chairman of the County Election Board, the Secretary or employees of the Board may be involved in reception of voting devices, election supplies, and ballot transfer cases from Inspectors. When receiving returns, the following procedure shall be observed:

(1) Representatives of the news media shall be assigned to a separate office or area. If available, a computer shall be placed in the media area to display the county's election results.

(2) Appropriate receptacles shall be prepared and arranged for receiving items from Inspectors.

(3) Inspectors shall form a line as they arrive, and shall be processed one at a time.

(4) Receive the voting device. Verify that the luggage tag (or other means of identification if the luggage tag is not used) showing the precinct number is attached to the voting device.

(5) Receive the Envelope for Tally Report. Open the envelope, verify that the following items are present, and examine them as necessary.

(A) Examine the original voting device tape, which includes all information printed from the time the polls were opened, including the Power Up Report, the Zero Report, ~~the Detail Report printed when the polls were closed,~~ and the first Detail and Tally Report printed when the polls were closed. If the Detail and Tally Report is not included on the tape, open the voting device case, turn on the power and print the report. Attach ~~it~~ the Detail and Tally Report to the voting device tape received in the envelope.

(B) Examine the Ballot Accounting Form or Forms. Verify that they have been completed and signed by Precinct Officials.

(C) The voting device key envelope shall be examined to be certain that the precinct number is written on it. The key envelope shall be set aside in a secure place.

(D) If uncounted ballots from the emergency compartment are found in the Envelope for Tally Report, ask the Inspector to step aside and wait until the ballots can be scanned on the election night recount voting device and then be properly secured. Ask the Inspector if the ATI device was used by any voter to cast an audio ballot during the day. Examine the Detail and Tally Report, the Ballot Accounting Form or Forms, and the ATI Session Log form to verify that an ATI ballot was cast. If the ATI device was used, make note on the front of the Envelope for Tally Report. See 230:35-3-85.4

(6) If all the necessary items from the Envelope for Tally Report are accounted for, transfer the voting device, the voting device tape, and the Ballot Accounting Form or Forms to the tabulation computer operator.

(7) The sealed ballot transfer boxes shall be received and transferred to secure storage.

(A) Examine the ballot transfer boxes to ensure that they have been properly sealed. If the long white State Election Board seal is missing or broken, immediately affix a short turquoise State Election Board seal to the ballot transfer box. The new seal shall be

signed by the County Election Board members and the box for "Other" shall be checked. Write the reason the seal is being applied in the space provided.

(B) In the event that the County Election Board must open a ballot transfer box on election night to retrieve an item enclosed in error inside the box by Precinct Officials, the Board members shall affix a short turquoise State Election Board seal to the box. The new seal shall be signed by the County Election Board members and the box for "Other" shall be checked. Write the reason the seal is being applied in the space provided.

(8) Receive the sealed orange provisional ballot bag.

(A) Remove the Provisional Ballot Roster from the clear plastic pocket on the bag. Make certain that the precinct number is indicated on the Provisional Ballot Roster before separating it from the bag.

(B) Place the provisional ballot bag in a secure receptacle. Access to the provisional ballot bags shall be restricted to authorized County Election Board personnel.

(C) Paperclip or staple the Provisional Ballot Roster pages together and set aside in a secure location. Access to these forms shall be restricted to authorized County Election Board personnel.

(9) Receive and examine the Precinct Registries.

(10) Receive and examine the Precinct Expense Claim Envelope and any unclaimed vouchers.

(11) The Inspector shall sign the Precinct Expense Claim Envelope and receive his voucher for compensation and mileage if all other vouchers are accounted for.

(12) Receive the election supply container and the Precinct Official Notebook and place them in appropriate receptacles.

(13) Receive and store the American flag.

230:35-3-85.1. Election night recounts

(a) **Precinct ballots.** Election night recounts are allowed only under the following circumstances.

(1) Precinct Officials failed to remove and count ballots in the emergency compartment of the ballot box before they closed the polls on the voting device.

(A) If Precinct Officials properly segregated the uncounted ballots from the counted ballots by placing the uncounted ballots inside the Envelope for Tally Report, only the uncounted ballots will be included in the election night recount. See 230:35-5-75.3(e)(6).

(B) If Precinct Officials mixed uncounted ballots from the emergency compartment with the counted ballots from the main compartment of the ballot box by placing them in the ballot transfer case, all ballots cast at the polling place will be included in the election night recount.

(2) Both the election results storage device and the backup memory device from a voting device have failed and no results can be obtained from either device. If this occurs, all ballots cast on that voting device will be included in the election night recount.

(3) ~~Comparison of the Detail Report with the Ballot Accounting Form(s), Spoiled Ballot Affidavit, and the ATI Session Log reveals a discrepancy of 2% or greater between the number of ballots issued and the number of ballots processed by the voting device.~~

~~(4)~~ The Secretary of the County Election Board is directed by the State Election Board to conduct an election night recount of all ballots cast at a precinct polling place in order to resolve a problem not ~~referenced~~ anticipated in this Section.

(b) **~~Absentee ballots from~~ Ballots cast during early in-person absentee voting, by mail, and by nursing home ~~absentee ballots~~ or veteran center voters.** Absentee ballots cast during early voting may be recounted on election night only under the circumstances described in (a) of this section. ~~Mail~~ Absentee ballots cast during early in-person absentee voting, by mail, and by nursing home ~~absentee ballots~~ and veteran center voters may be recounted on election night only under the circumstance outlined in (a)(2) of this Section.

(c) **Procedure for election night recount.** An election night recount ~~shall~~may be conducted on a voting device ~~especially~~ designated ~~and prepared~~ for election night recounts. The voting device may be programmed either to recount ballots for any precinct in the election or for the specific precinct being recounted. ~~(Counties with a high-speed ballot scanner for counting mail and nursing home absentee ballots also may perform election night recounts on the high-speed scanner.)~~ If all the ballots for a large precinct or for a precinct where voters received more than one ballot must be included in an election night recount, more than one voting device may be prepared and used. ~~The ballots shall be divided as evenly as possible among all the voting devices being used to perform the election night recount.~~ The election night recount shall be conducted in public view and in the presence of the County Election Board members and a representative of the County Sheriff. [26:7-134.1] If possible, members of the news media also shall be present. The recount shall be conducted according to the following procedure. Before beginning the recount, the Secretary shall determine whether any ballots were cast using the ATI device. If any such ballots were cast, follow the procedure described in 230-35-3-85.4. The Secretary and the County Election Board Chairman and Vice Chairman shall use the printed cast vote record of the ATI ballot to mark a substitute ballot to be inserted in the voting device during the election night recount. The procedure outlined in 230:30-19-6 shall be observed to mark the substitute ballot.

(1) The Secretary shall designate one person to insert the ballots included in the election night recount, one at a time, into the voting device ~~designated for election night recounts~~.

(2) After all the ballots included in the election night recount for the precinct have been inserted into the device, the ballots shall be removed from the main compartment of the ballot box and shall be replaced in the original ballot transfer case.

(A) If the voting device was programmed to accept ballots only for the specific precinct being recounted, the polls on the voting device shall be closed and the

required number of Detail and Tally Reports shall be printed. The report tapes shall be signed by the operator of the voting device and by the County Election Board members. One copy shall be placed inside the original ballot transfer box with the recounted ballots. Other copies shall be distributed in the same manner described in 230:35-5-75.3(a). Once all Detail and Tally Reports have been printed, the election results storage medium shall be removed and read into the tabulation computer.

(B) If the voting device was programmed to accept ballots for any precinct in the election, the voting device shall be kept secure until it is determined that no additional election night recounts are required. After all other precinct election results have been read into the tabulation computer, the polls shall be closed on the election night recount device, and the election result storage medium shall be removed and read into the tabulation computer. A Detail and Tally Report is not required to be printed from the voting device. A report from the tabulation computer may be used instead and shall be distributed in the same manner described in 230:35-5-75.3.

(3) The ballot transfer case shall be resealed and a short turquoise State Election Board seal shall be affixed to the box. [26:7-134.1] The new seal shall be positioned so that it can be distinguished from the broken long white State Election Board seal signed by the Precinct Officials. The members of the County Election Board and the person who fed the ballots into the voting device all shall sign the short turquoise seal. The Secretary shall check the "Election Night Recount" box on the seal.

~~(4) Any additional election night recounts shall be conducted on the same voting device .~~

~~(5) After all precinct returns are received and canvassed and the Secretary verifies that no additional election night recounts are needed, the polls shall be closed on the election night recount voting device. A Detail Report and a Tally Report shall be printed. The Secretary and the County Election Board Chairman and Vice Chairman shall sign the Detail and Tally Report in the spaces provided for Precinct Officials' signatures. An additional number of Detail and Tally Reports shall be printed as instructed by the Secretary.~~

~~(6) The election results storage device shall be removed from the voting device and shall be given to the tabulation computer operator to be read and tabulated.~~

~~(d) **Obtaining cast vote records for ATI ballots.** In the event that all ballots from a precinct must be recounted on election night, and if the ATI device was used by any voter to cast a ballot during the day, the Secretary shall cause the cast vote record for each audio ballot to be retrieved and printed from the precinct MBB. The precinct MBB then shall be set aside to ensure that it is not read and tabulated. The Secretary and the County Election Board Chairman and Vice Chairman shall use the printed cast vote record of the ATI ballot to mark a substitute ballot to be inserted in the voting device during the election night recount. The procedure outlined in 230:30-19-6 shall be observed to mark the substitute ballot.~~

230:35-3-85.2. Addressing voting device printer failure, election results storage device failure and/or backup memory device failure

(a) In the event that a voting device printer fails and Precinct Officials are unable to print the required Detail ~~Report~~ and Tally Reports at the polling place, Precinct Officials shall be instructed to post a notice on the door of the polling place that voting device results are unavailable and that results for the precinct will be available from the County Election Board later in the evening. When the election results storage device is read and tabulated in the Tally program, a Precinct Report can be printed to show the results. The Inspector may be asked to take a copy of this report back to the polling place to post on the door before he or she returns home.

(b) In the event that County Election Board personnel are unable to download the results from an election results storage device used in a voting device on election day into the tabulation computer, the County Election Board Secretary immediately shall contact the State Election Board staff for instructions to access the backup memory device in the voting device. In the event that County Election Board personnel are also unable to download results from the backup memory device from a voting device into the tabulation computer, an election night recount of all ballots cast at the precinct polling place shall be conducted as outlined in 230:35-3-85.1.

230:35-3-87. Accumulating and verifying election results

(a) **Prior to 7 p.m. election night.** Prior to 7 p.m. on election night, and preferably on the day before the election, the Secretary of the County Election Board shall cause the tabulation computer to be prepared to read and tabulate election results.

(b) **After 7 p.m. on election night.** The Secretary shall cause the election results storage devices to be read into the tabulation computer in order to accumulate election results. The following procedure shall be observed.

(1) The election results storage devices from the voting device or devices used for in-person absentee voting and from the voting device or devices used to count mail and nursing home absentee ballots may be read into the Tally computer immediately after 7 p.m. In all counties except Oklahoma and Tulsa Counties, these absentee results must be read and tabulated before any precinct results.

(2) As voting devices are received from Inspectors as described in 230:35-3-84, the election results storage devices shall be removed from the voting device as outlined in 230:35-3-85.3, and shall be transferred to the tabulation computer ~~computer~~. The tabulation computer operator shall read and tabulate election results storage devices as they are received. The operator should manually start and stop the tabulation process at least once every 10 minutes to ensure that all results read have been tabulated and uploaded to the State Election Board.

(3) Periodically throughout the evening, the tabulation computer operator shall print appropriate reports with current results. Copies of the updated reports shall be made available to the County Election Board members, to the news media, and other interested ~~person~~ persons as needed.

(c) **Verifying election results in MESA and on State Election Board website.** After all election results storage devices have been read and tabulated, including from the voting device designated and prepared for election night recounts, the tabulation computer operator shall take the following steps.

(1) Request, print, and label final copies of all reports.

(2) Close the tabulation program and follow the appropriate software instructions to signal the State Election Board that no additional results will be received from the county on election night.

(3) Access the certification reporting system in MESA.

(A) Request and print the Election Summary Results by County report and the Precinct Report from MESA.

(B) If yours is the control (parent) county for a multi-county school district or municipality, also request and print the Election Summary Results report to include results from affected counties.

(C) Request and print the Unofficial Pre-provisional Report

(4) Access the State Election Board's election results reporting website and go the page displaying the county's results. Verify that the vote totals shown for the county on the reports printed from the tabulation computer and the results shown on the Election Summary Results by County report from MESA match the totals shown on the website.

(5) If the county is the control (parent) county for a multi-county school district or municipality, go to the multi-county results page and select the multi-county entity from the drop-down list. Verify that the results shown for the entity on the Election Summary Results report, which includes results from affected counties, match the results shown on the website. The control (parent) county does not have a report from the tabulation computer that includes results from affected counties.

(d) **Friday following election.** The Secretary of the County Election Board shall cause a voting device to be designated and prepared for counting provisional ballots. All provisional ballots that have been verified and approved for counting shall be counted in the presence of the members of the County Election Board on the designated voting device. When all provisional ballots have been counted, the following steps shall be performed.

(1) Close the polls on the voting device and print the Detail ~~Report~~ and Tally Report. Print additional copies of the Detail and Tally Report as instructed by the Secretary.

(2) Remove the election results storage device from the voting device as instructed in 230:35-3-85.3

(3) Read and tabulate the election results storage device in the tabulation computer as outlined in (b) of this Section.

(4) Request, print, and label all appropriate reports.

(5) Compare the results shown on the reports from the tabulation computer with the results shown on the Tally Report from the voting device used to count the provisional ballots. Verify that all vote totals match.

(6) Close the tabulation program and follow the appropriate software instructions to signal the State Election Board that the election results are complete.

(7) Access certification reporting system in MESA.

(A) Request and print the Election Summary Results by County report and the Precinct Report from MESA. Verify that vote total shown include changes resulting from the counted provisional ballots

(B) If yours is the control (parent) county for a multi-county school district or municipality, also request and print the Election Summary Results report to include complete results from affected counties.

(C) Request and print the Unofficial Post-provisional Report. Verify the vote totals shown are correct.

(D) Request and print the appropriate number of Official Certification Reports.

PART 17. DISPOSITION OF MATERIALS

230:35-3-100. Disposing of Detail and Tally Reports

Detail and Tally Reports printed from the voting devices used to count ballots at an election shall be retained until ballots from the election are destroyed. See 230:35-3-98. At that time, the Detail and Tally Reports also may be destroyed.

230:35-3-101. Processing forms used on election day by Precinct Officials

(a) The Secretary shall remove forms used on election day by Precinct Officials from the Forms section of the Precinct Official Notebook and all used Oklahoma Voter Registration Applications from the election supply container from each precinct.

(1) The Secretary shall cancel the registrations of deceased voters indicated by used ~~Cancellation of~~ Request to Cancel Registration of Deceased Voter forms as outlined in ~~230:15-5-63 and 230:15-5-65~~ 230:15-11-4.

(2) The Secretary shall read the Inspector's Notes to Secretary sheets and shall take any necessary action.

(3) The Secretary shall examine the Absentee Voter Affidavit. If MESA identifies voters who voted both by mail or in-person absentee ballot and at a precinct polling place in the election, the Secretary shall notify both the District Attorney and the State Election Board. The Secretary shall follow any instructions concerning the Absentee Voter Affidavit given by either the District Attorney or the State Election Board. See 230:15-9-13.

(b) All voter registration application forms shall be processed according to the procedure outlined in 230:15-9-18 ~~and in 230:15-9-24~~ through 230:15-9-26.

(c) After the used election day forms from the Forms section of the Precinct Official Notebook have been processed as outlined in (a) of this Section, they shall be retained for 24

months following the date of the election. The Secretary shall cause the Forms section of the Precinct Official Notebook to be replenished before the next election.

230:35-3-103. Disposing of supplies

The Secretary shall examine all supplies for serviceability. Supplies that can be reused, such as signs and unused forms in the forms section of the Precinct Official Notebook, shall be returned to the inventory. Supplies that cannot be reused shall be discarded. Other supplies, such as ballpoint pens, thumbtacks, rubber bands, scissors, paper clips, and tape, shall be replenished as necessary and stored permanently in the election supply container for each precinct. When ballots are destroyed, the Secretary shall examine the ballot transfer boxes. If they are still serviceable, the old seals shall be removed and the boxes shall be retained for future use.

PART 19. VERIFYING AND COUNTING PROVISIONAL BALLOTS

230:35-3-126. Criteria for verification of provisional ballot affidavit information

(a) **Voter not in Precinct Registry.** A provisional ballot cast by a voter whose name is not in the Precinct Registry shall be considered verified and approved for counting if evidence of the voter's valid and timely voter registration is found and if:

(1) the provisional ballot was cast in the precinct of the voter's residence as indicated in the voter registration record or other evidence found; and

(2) in the case of a partisan primary election, the voter cast a provisional ballot for the same party as that of the voter's political affiliation in the voter registration record or other evidence found.

(b) **Voter without proof of identity.** A provisional ballot cast by a voter who is unable to provide or who refused to provide a valid form of proof of identity shall be considered verified and approved for counting if all following circumstances are met.

(1) The voter's name on the affidavit substantially conforms to the voter's name in MESA. If a voter has legally changed his or her name but has not updated the name on his or her voter registration, the voter may note this fact on the affidavit and may submit an Oklahoma Voter Registration Application form to change his or her name for voter registration purposes with the affidavit. Such a voter shall be deemed to have met this requirement.

(2) The voter's residence address on the affidavit substantially conforms to the voter's residence address in the voter registration database. A voter who has changed his or her residence address within the county, but has not updated the address on his or her voter registration may note this fact on the affidavit and also submit an Oklahoma Voter Registration Application form to change residence address within the county. Such a voter shall be deemed to have met this requirement.

(3) The voter's date of birth on the affidavit matches the date of birth recorded for the voter in MESA.

(4) The voter's Oklahoma driver license number as shown on the affidavit or the last four digits of the voter's Social Security number as shown on the affidavit match the information ~~in~~ recorded for the voter in MESA. However, if the voter's original voter registration occurred prior to January 1, 2004, the registration predates any requirement to provide either an Oklahoma driver license number or the last four digits of the Social Security number and this requirement shall not apply.

(c) **Political affiliation dispute.** In the event a voter in the Primary or Runoff Primary Election casts a provisional ballot after disputing the political affiliation indicated in the Precinct Registry, the provisional ballot shall be counted only if evidence of a timely and valid change of political affiliation is found.

(d) **Uniformed services voters.** Uniformed services voters are those identified in ~~230:30-3-3 and in 230:35-5-175~~ Title 26 O.S., Sections 14-121 and 14-137. Provisional ballots cast by these voters shall be counted if they are cast in the correct precinct for the voter's residence address. [26:7-116.1; 26:14-121]

(e) **Overseas voters.** Overseas voters are those voters identified in ~~230:30-3-3 and 230:35-5-175~~ Title 26 O.S., Sections 14-121 and 14-137. Provisional ballots cast by these voters shall be counted if they are cast in the correct precinct for the voter's residence address. ~~[26:7-116.1; 26:14-121]~~

(f) **School district or municipal assignment dispute.** Voters listed in the Precinct Registry who disagree with their assignment to a particular school district or municipality may cast a provisional ballot for their preferred school district or municipality. Provisional ballots cast by these voters shall be counted only if evidence is found that the assignment indicated in the Precinct Registry is incorrect.

(g) ~~**Voter Who Disputes Credit for Absentee Voting B In-Person Absentee Voting ONLY.**~~**Voter who disputes existing credit for absentee voting during in-person absentee voting.** In-person absentee voters who have already received credit for voting by mail or on an earlier day of in-person absentee voting and who deny having voted may cast a provisional ballot. Their provisional ballot shall be counted only if evidence is found that the credit for absentee voting for this voter was recorded in error or that evidence is found indicating that the earlier absentee ballot was submitted by someone other than the voter.

230:35-3-131. Opening provisional ballot ~~affidavit~~ secrecy envelopes and counting provisional ballots

(a) The County Election Board members shall meet on Friday next following the election at such time as the Secretary may prescribe to open the verified provisional ballot affidavit envelopes and to count the provisional ballots. The Board members shall follow these steps to remove the provisional ballots from the envelopes.

(1) The Board members shall receive the verified provisional ballot ~~affidavit~~ affidavits and ballot secrecy envelopes from the Secretary or a designated County Election Board employee.

(2) The Board members shall ~~open~~separate the ~~affidavit~~affidavits from the ballot secrecy envelopes~~and remove the ballot secrecy envelopes~~. If an affidavit ~~envelope~~ indicates that the voter received two or more ballots, but that not all the ballots enclosed are to be counted, see (c) of this Section.

(A) Set the affidavit ~~envelope~~ aside.

(B) Place the ballot secrecy envelope in an appropriate container.

(3) When all the ~~affidavit envelopes have been opened~~ affidavits have been separated from the ballot secrecy envelopes, the secrecy envelopes shall be mixed together in the container.

(4) The Board members shall open the ballot secrecy envelopes and remove the ballots.

(A) Set the secrecy envelope aside.

(B) Unfold the ballot and place it in the designated container.

(b) When all the verified provisional ballot secrecy envelopes have been opened, the ballots shall be counted. The following procedure shall be observed.

(1) The Secretary shall assign a County Election Board employee to count the provisional ballots using a voting device designated and prepared for the purpose. The members of the County Election Board shall observe the counting process.

(2) The employee assigned to count the ballots shall take the following steps.

(A) Insert the ballots, one at a time, into the device.

(B) After all the provisional ballots have been counted,~~.~~ close the polls on the voting device and print the Detail ~~Report~~ and Tally Report. An additional number of Detail and Tally Reports shall be printed as instructed by the Secretary.

(3) The employee who counted the ballots and the members of the County Election Board each shall sign all the copies of the Detail and Tally Report.

(4) The employee shall remove the counted provisional ballots and place them in a ballot transfer case. ~~If ballots from more than one precinct are placed in the same ballot transfer case, the ballots should be sorted and separated by precinct.~~ One signed copy of the Detail and Tally Report shall also be placed in the ballot transfer case. The ballot transfer case shall be sealed with a short turquoise State Election Board seal signed by the County Election Board members and the employee who counted the ballots. The Secretary shall check the "Counted Provisional Ballots" box on the seal and shall indicate the precinct numbers included in the ballot transfer case.

(5) The sealed ballot transfer case shall be given to the Sheriff, who shall provide security for the counted ballots until 5 p.m. on Friday following the election or until the ballots are delivered to the district courtroom for a recount.

(6) One copy of the provisional ballots Detail and Tally Report shall be made available for inspection in the County Election Board office after 1 p.m. on Friday following the election.

(c) If a provisional voter was issued two or more ballots and, upon verification of the voter's information, it is determined that one or more of the ballots cannot be counted, the County Election Board members shall follow these steps when opening the affidavit envelope.

(1) Open the ~~affidavit envelope and remove the~~ballot secrecy envelope.

(2) Write "Count (BALLOT TYPE OR CODE) ballot only" on the secrecy envelope in red ink.

(3) Place secrecy envelope in the container with other secrecy envelopes.

(4) When opening the ballot secrecy envelopes, remove from the marked envelopes only the specific ballot or ballots to be counted. Put the ballots that cannot be counted back in the secrecy envelope and set it aside with the other uncounted provisional ballot materials.

SUBCHAPTER 5. INSTRUCTIONS FOR PRECINCT ELECTION OFFICIALS

PART 7. GENERAL GUIDELINES

230:35-5-38. Election results reported to news media

Sometimes news media representatives contact Precinct Officials to report election results on election night. It is permissible, but not required, for Precinct Officials to do this. Under no circumstances may any election results be reported until after a Detail and Tally Report has been posted on the door of the polling place. If the Secretary of the County Election Board includes a special form in the election supplies to be used to report the precinct's results for the local news media, the Inspector completes it as instructed and returns it to the County Election Board office with the other election materials.

PART 11. PROCESSING THE VOTER

230:35-5-55. Routine for Judge

(a) The Judge follows these routine steps to process voters. Refer to the Judge's section of the Election Day Reference and Problem Solver in the Precinct Official Notebook for instructions in non-routine situations.

(1) Greet the voter and ask the voter's name. If this is a Primary or Runoff Primary, also ask the voter's political party.

(2) Ask to see the voter's proof of identity.

(A) The voter may present any one of the following documents as proof of identity:

(i) An Oklahoma driver license

(ii) A voter identification card issued by the County Election Board

(iii) A temporary voter identification document issued by the County Election Board

(iv) A state identification card

(v) A United States passport

(vi) A United States military identification, including retired military identifications

(vii) Any other such document issued by the state of Oklahoma, the United States government, or a federally recognized tribal government which includes the person's name, a photograph of the person, and, if the document has an expiration date, that expiration date is later than election day. A document that does not bear an expiration date, and is therefore valid indefinitely, shall be valid proof of identity.

(B) Use the voter's proof of identity document to find the voter's name in the Precinct Registry. The person's name on the proof of identity must substantially conform to the name listed in the Precinct Registry.

(C) If the voter does not provide proof of identity, the voter must be offered the opportunity to vote by provisional ballot. The provisional ballot affidavit, once verified by the County Election Board after election day, shall be valid proof of identity.

(3) If there is a message printed in the "Signature of Voter" column, follow the instructions in 230:35-5-113 or 230:35-5-113.1.

(4) Tell the voter to sign the Precinct Registry. [26:7-114; 26:7-117]

(5) Carefully check the following information in the Precinct Registry to determine the ballots the voter is eligible to receive.

(A) For a Primary Election, check the political affiliation listed in the Precinct Registry.

(i) Persons registered with a specific political party affiliation are allowed to receive only the Primary or Runoff Primary ballot for that party.

(ii) Persons registered as Independent (or "no party") voters may be eligible to choose a party ballot if the party has allowed Independent voters to vote in its primary elections. Tell Independent voters to read the Information for Independent Voters card, if applicable.

(B) If this is a school district, technology center district, or municipal election, look in the "School," "TC," and "Muni" columns. A voter is eligible to receive ballots for the entities listed in these columns.

(6) Refer to the Ballot Codes List provided by the County Election Board and write the code for each ballot the voter will receive in the "Ballots Issued" column of the Precinct Registry.

(7) Tell the Clerk ~~the tell the Clerk~~ which ballots the voter is eligible to receive.

(b) If the voter's name is not in the Precinct Registry, if the voter does not have or refuses to provide proof of identity, or if the voter disputes the political affiliation or district information listed in the Precinct Registry, the voter is entitled by both state and federal law to cast a provisional ballot. Refer the voter to the Inspector or to the Provisional Voting Officer. See 230:35-5-171. If a voter who is eligible to cast a provisional ballot refuses the offer of the provisional ballot and leaves the polling place without voting, record the incident on the Provisional Ballot Refusal form.

PART 15. AFTER THE POLLS CLOSE

230:35-5-75.1. Obtaining Detail and Tally Report

After all voters who are in line at 7 p.m. have finished voting and have fed their ballots into the voting device, the Inspector unlocks the emergency compartment of the ballot box, takes out any ballots deposited there during the day, and feeds them into the voting device. See 230:35-5-154. The Inspector then follows the voting device instructions in the Election Day Manual and Problem Solver section of the Precinct Official Notebook to obtain the required number of copies of the Detail and Tally Report.

(1) Tear the tape off the voting device when it finishes printing the first Detail and Tally Report.

(2) The Inspector, Judge, and Clerk sign the first Detail and Tally Report in the spaces provided at the end of the tape.

(3) Print at least two more copies of the Detail and Tally Report. In the event that the Secretary of the County Election Board has instructed the Inspector to print additional copies of the Detail and Tally Report, print the number of additional copies as instructed.

(4) Tear each additional copy of the Detail and Tally Report off the device as it finishes printing and sign each copy in the spaces provided at the end of each report tape.

230:35-5-81. Inspector shall not leave

The Inspector may not leave the County Election Board office until ~~the~~ all the supplies and materials for ~~his~~ the precinct have been received and verified by County Election Board personnel.

[OAR Docket #19-704; filed 6-27-19]

TITLE 230. STATE ELECTION BOARD
CHAPTER 45. CONTESTS OF ELECTION

[OAR Docket #19-705]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Recounts
Part 1. Recounts for County Office
230:45-3-12. When the recount is finished [AMENDED]
Part 9. Recounts with Electronic Voting Devices
230:45-3-51. Operation of voting device during an electronic recount [AMENDED]
230:45-3-53. Instructions for electronic recount [AMENDED]
Subchapter 5. Instructions for Counters for Manual Recount
Part 1. General Guidelines
230:45-5-1.1. Number of Counters required [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107; Secretary of the State Election Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019

COMMENT PERIOD:
February 15 through March 22, 2019
PUBLIC HEARING:
March 22, 2019
ADOPTION:
March 27. 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:

Amendments in Subchapter 3 concern the adjustment of election results following a recount prior to obtaining an Official Certification Report. Since most recounts are conducted manually, any change of results following a recount must be by directly entering the results in the MESA election results database. (Such adjustments can be made only by authorized Director-level State Election Board agency employees who have the appropriate MESA administrative credentials.)

Most manual recounts include in minor changes vote totals for one or more candidates in a race, because human eyes see marks on ballots differently than the voting device saw them when the ballots were originally scanned. While the total votes counted for one or more candidates in a recounted race may increase or decrease by one or two ballots, we have not seen a recount change the outcome of an election since we began using voting devices in 1992 when all the ballots cast and counted on election day were included in a recount.

Other amendments in Subchapter 3 update rules concerning the conduct of a recount using voting devices. The amended Sections were written to accommodate the voting device system used in Oklahoma from 1992 through 2011. In all those years, only a single voting device recount was conducted. However, very close results in a state office in 2018 prompted the State Election Board staff to create rough instructions to conduct such a recount. Although they proved unnecessary in 2018, the fleshed out the rough instructions after the crises passed and we will be prepared to conduct voting device recounts using the current system in the future.

Amendments in Subchapter 5 update instructions for Counters in a manual recount, specifically removing numerical limits on the number of Counters that may be used in a recount provided that they number of Counters employed can be fully compensated from the recount deposit.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 3. RECOUNTS

PART 1. RECOUNTS FOR COUNTY OFFICE

230:45-3-12. When the recount is finished

When the recount is complete, the County Election Board shall recess its meeting and shall reconvene in the County Election Board office. The Secretary shall follow the instructions provided by the State Election Board ~~enter~~ to cause the recounted results to be entered manually in MESA so that Official Certification Reports of the recounted results can be printed. When these reports have been printed and ~~proofed~~ proofread, the County Election Board members shall certify the recounted election results as outlined in 230:35-3-91. [26:8-115]

PART 9. RECOUNTS WITH ELECTRONIC VOTING DEVICES

230:45-3-51. Operation of voting device during an electronic recount

The Secretary of the County Election Board shall designate an employee of the County Election Board or a Precinct Official to operate each voting device used during an electronic recount. ~~If necessary, Precinct Inspectors also may be designated to operate voting devices during an electronic recount.~~

230:45-3-53. Instructions for electronic recount

(a) **Preparing to count.** When the Judge rules that the ballots have been properly preserved and that the recount can be performed, the Secretary shall break the seal on each ballot transfer box from the ~~the~~ first precinct to be recounted. In the event that a ballot transfer box contains ballots from more than one entity, the Secretary shall assign each opened ballot transfer case to a County Election Board employee or to a Precinct Official to sort and separate the ballots containing the race or question to be recounted. All other ballots for that precinct shall be replaced in the ballot transfer box. Ballots from a large precinct may be divided between two or more voting devices if necessary to speed the recount process. The Secretary shall break the seal on the ballot transfer box for the next precinct to be recounted as soon as all the ballots from the first precinct have been sorted and shall assign the opened transfer case to a County Election Board employee or a Precinct Official to sort and separate the ballots containing the race or question to be recounted. This process shall be repeated as necessary until all the ballots to be recounted have been sorted and separated for counting.

(b) **Counting the ballots.** After the preparations described in (a) of this Section have been completed, the Secretary shall transfer the ballots to the person assigned to operate the voting device to begin processing the ballots one at a time through the voting device. If the voting device returns a ballot, the operator shall ~~be~~ accept the ballot and continue. See 230:35-5-162. A Watcher may object in writing to actions taken by the person operating the voting device. After all the ballots for the first precinct have been processed through the voting device, the person operating the voting device shall close the polls on the device and shall remove ~~the ballots from the ballot box and return them to the ballot transfer box for the precinct~~ the election results storage medium from the voting device, verify the storage medium is properly labeled for the precinct just recounted, and secure the storage medium. The operator shall remove the recounted ballots from the ballot box and replace them in the original ballot transfer case for that precinct. The ballots shall be secured as described in (d) of this section. The

operator then shall accept ballots for the next precinct from the Secretary and ~~immediately~~ shall prepare the voting device to count that precinct. When the device is ready, the operator shall begin processing ~~them~~ the ballots.

(c) **Concluding the recount.** When all the ballots for all precincts included in the recount have been recounted, the operator of each voting device used shall ~~close the polls on the voting device and shall print the Detail Report and the Tally Report. Additional copies of the Tally Report shall be printed as directed by the Secretary~~ ensure that all ballots have been removed from the ballot box of each voting device used. The County Election Board meeting shall be recessed and the members and employees of the County Election Board immediately shall return to the County Election Board office to update the election results and print Official Certification Reports, and then to certify the results of the recounted race or question.

(d) **Securing the ballots.** After ~~the recount is completed~~ all the ballots containing the race or question being recounted have been scanned, the ballots shall be replaced in the original ballot transfer box or boxes for that precinct. The ~~Secretary~~ County Election Board members and the operator each shall ~~seal the transfer box with a long white~~ sign a short turquoise State Election Board seal. The members of the County Election Board, including the Secretary, shall sign the seal. The Secretary shall check the "Other" box on the seal and shall indicate in the space provided that the box was resealed after a recount. The ballots shall be returned to the County Election Board office to be stored with other election materials as required by law. However, if any ballots will be involved in another recount at a later time, the ballot transfer box or boxes containing those ballots shall be returned to the custody of the County Sheriff until time for the next recount to begin.

SUBCHAPTER 5. INSTRUCTIONS FOR COUNTERS FOR MANUAL RECOUNT

PART 1. GENERAL GUIDELINES

230:45-5-1.1. Number of Counters required

The number of Counters required to conduct a manual recount shall be determined by the number of ballots to be recounted. ~~Four Counters shall be required for each 4,000 ballots to be recounted. The number of Counters shall be increased by four for each additional 4,000 ballots, or fraction thereof, to be recounted.~~ However, the number of Counters employed for the recount should not exceed the amount of the recount deposit.

[OAR Docket #19-705; filed 6-27-19]

TITLE 230. STATE ELECTION BOARD
CHAPTER 50. AUTOMATED SYSTEMS

[OAR Docket #19-706]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Voting Devices and Data Processing
Part 11. Voting Device Testing [REVOKED]
230:50-3-69. Preparing test deck of ballots [REVOKED]
230:50-3-70. Retention of testing materials [REVOKED]
AUTHORITY:
Title 26 O.S., Section 2-107; Secretary of the State Election Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15 through March 22, 2019
PUBLIC HEARING:
March 22, 2019
ADOPTION:
March 27. 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:

Proposed amendments in Subchapter 3 revoke rules regarding the preparing of test deck ballots used for logic and accuracy testing (LAT) of ballots and voting devices and the retention of testing materials. These original rules and procedures were developed and used for the voting device system used in Oklahoma from 1992 through 2011.

The procedures are not applicable to the Hart InterCivic eScan A/T voting device system and digitally printed ballots in use since 2012.

These two rules were, for all practical purpose, forgotten, and were rediscovered and marked for revocation during a review and comparison of the content of the State Election Board's rulemaking files and the content of our rules as published in the Oklahoma Administrative Code.

The procedures used for pre-election testing by County Election Board personnel on the State's current digitally printed ballots and the voting devices used to read them are located in 230:25-17-5. These procedures, originally developed in 2012, have been refined and revised several times as both State Election Board and County Election Board personnel have not only learned more about the devices and the way they function and to trust the system. Section 230:25-17-5 was adopted and codified in 2018. No specific language is included concerning the retention of testing materials, but it is generally understood that when an election involves candidates for federal offices, all election materials are retained for a period of 24 months following the date of the election. For elections that do not include candidates for federal offices, with the exception of precinct registries and materials used to cast and count absentee ballots, most election materials may be disposed 30 days after the date of the election.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 3. VOTING DEVICES AND DATA PROCESSING

PART 11. VOTING DEVICE TESTING [REVOKED]

230:50-3-69. Preparing test deck of ballots [REVOKED]

~~(a) **Test deck guidelines.** A test deck of ballots shall be prepared for each absentee and regular precinct in an election. The test deck shall include ballots from every ballot style to be used in the precinct on election day. A test deck may be used in voting devices for more than one precinct if the ballot styles are the same. Each test deck shall include one blank ballot and one overvoted ballot selected from any ballot style in the precinct. Each voting position on each ballot style shall be tested to ensure that the voting device is reading the ballot style accurately. The test deck shall be assembled and marked according to instructions provided by the State Election Board for the type of election being conducted.~~

~~(b) **Ballots for test deck.** The Secretary shall include a minimum of 100 extra ballots to be used for testing when determining the total quantity of each ballot style to be printed. When ballots are delivered by the printer, the Secretary shall reserve at least two books of ballots for each ballot style and shall mark "Test/Reserve" in ink on the stub of the books. Any ballots in these books not used in test decks shall be retained in a secure location in the County Election Board office as an emergency reserve.~~

230:50-3-70. Retention of testing materials [REVOKED]

~~All materials concerning the testing of voting devices and memory packs for an election shall be retained in a file for the election. The materials shall be retained for 24 months after the date of the election. The following testing materials shall be retained.~~

~~(1) The completed Testing Procedures Checklist for the election.~~

~~(2) All voting device tapes produced by all voting devices during testing.~~

~~(3) All ballot test decks.~~

~~(4) All reports printed during testing.~~

~~(5) All other applicable materials used or produced during the testing procedures.~~

[OAR Docket #19-706; filed 6-27-19]

TITLE 243. OKLAHOMA ENERGY RESOURCES BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS [REVOKED]

[OAR Docket #19-642]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [REVOKED]
243:1-1-1 through 243:1-1-3 [REVOKED]
Subchapter 3. Purposes, Organization, Funding and Procedures of the OERB [REVOKED]
243:1-3-1 through 243:1-3-4 [REVOKED]
Subchapter 5. Hearing Practices and Procedures [REVOKED]
243:1-5-1 through 243:1-5-12 [REVOKED]
Subchapter 7. Procedures for Inspecting and/or Copying Public Records [REVOKED]
243:1-7-1 through 243:1-7-7 [REVOKED]
AUTHORITY:
Oklahoma Energy Education and Marketing Act; Title 52, Sections 288.1 through 288.12, of the Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 20, 2018
COMMENT PERIOD:
November 20, 2018 through January 16, 2019
PUBLIC HEARING:
None held or requested
ADOPTION:
March 12, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
November 1, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The permanent rulemaking action revokes administrative rules that are no longer necessary for the operations of OERB. The revocation of administrative rules will not have any impact on the services or programs administered by OERB.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

243:1-1-1. Purpose [REVOKED]

~~The provisions of this Chapter set forth the organization and procedural rules governing the Oklahoma Energy~~

~~Resources Board and have been adopted for the purpose of complying with 75 O.S., Section 302.~~

243:1-1-2. Statutory citations [REVOKED]

~~Citations to statutes in this Chapter refer to the most recent codification of the Oklahoma Energy Education and Marketing Act, Title 52, Sections 288.1 through 288.12, of the Oklahoma Statutes.~~

243:1-1-3. Definitions [REVOKED]

~~Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Energy Education and Marketing Act shall have the meanings set forth in such act. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:~~

~~**"Act"** means the most recent codification of the Oklahoma Energy Education and Marketing Act, 52 O.S. Sections 288.1 through 288.12.~~

~~**"Assessment"** means the assessment provided in Section 288.8A of the Act.~~

~~**"Board"** means the Oklahoma Energy Resources Board.~~

~~**"OERB"** means the Oklahoma Energy Resources Board.~~

~~**"Refund"** means the refund of the Assessment authorized by Section 288.9A of the Act.~~

~~**"Revolving Fund"** means the fund created in the State Treasury for the OERB to be designated the "Energy Resources Revolving Fund."~~

SUBCHAPTER 3. PURPOSES, ORGANIZATION, FUNDING AND PROCEDURES OF THE OERB [REVOKED]

243:1-3-1. Purpose [REVOKED]

~~The OERB is the policy making and governing authority for administration of the Act. The purposes of the OERB are set forth in the Act, but may be stated generally to include coordinating a program designed to demonstrate to the general public the importance of the Oklahoma oil and gas exploration and production industry, encouraging the wise and efficient use of energy, promoting environmentally sound production methods and technologies, developing existing supplies of Oklahoma's oil and gas resources, supporting research and educational activities concerning the oil and gas exploration and production industry and causing the remediation of historical oilfield environmental problems.~~

243:1-3-2. Funding [REVOKED]

~~(a) The activities of the OERB are funded through the Assessment. The Assessment is voluntary inasmuch as any party subject to the Assessment may apply for a Refund of the Assessment.~~

~~(b) The OERB may expend Revolving Fund revenues as provided by law.~~

~~(c) Expenditures by OERB shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of Finance for approval and payment.~~

243:1-3-3. Organization of the OERB [REVOKED]

~~(a) The Board shall be organized in accordance with Sections 288.4 and 288.6 of Title 52 of the Oklahoma Statutes. The powers and duties of the Board shall be as set forth in 52 O.S., Section 288.5. Membership on the OERB shall be determined in accordance with 52 O.S., Section 288.4.~~

~~(b) The Board may appoint a Director to carry out the provisions of the Act. The Director shall not be an appointed Board member.~~

243:1-3-4. Official actions [REVOKED]

~~(a) All official acts of the Board shall be evidenced by a written record, and all final orders, decisions, opinions, rules and other written statements of policy of interpretations formulated, adopted or used in the discharge of the function of the Board shall be available for public inspection.~~

~~(b) Official action of the Board shall not be bound or be prejudiced by any informal statement made or opinion given by any Board member, the Director or employees of the Board.~~

SUBCHAPTER 5. HEARING PRACTICES AND PROCEDURES [REVOKED]

243:1-5-1. Hearings [REVOKED]

~~(a) **Authority to hold hearings.** Pursuant to the provisions of the Oklahoma Administrative Procedures Act, the Board may hold hearings on any matters within its jurisdiction under the Act, either upon its own motion or upon written request therefor by any person aggrieved by any act, threatened act or failure to act of the Board, or by any report, regulation, rule or order of the Board.~~

~~(b) **Request for hearing.** The written request for hearing should specify the grounds to be relied upon as a basis for relief requested at the hearing.~~

~~(c) **Attendance at hearing.** All hearings shall be open to the public.~~

243:1-5-2. Setting or denial of hearing [REVOKED]

~~Upon receipt of a written request for a hearing as outlined in 243:1-5-1 of this Subchapter, the Board shall either set down the matter for hearing within thirty (30) days from the receipt of the request therefor or shall issue a written order denying hearing.~~

243:1-5-3. Notice [REVOKED]

~~(a) **Time of notice.** Notice of all hearings shall be given in writing not less than twenty-one (21) days in advance thereof to all persons directly affected by such hearing, but for good cause shown, any hearing may be rescheduled, provided all persons entitled to notice of such hearing are promptly advised thereof.~~

~~(b) **Contents of notice.** The notice of hearing shall contain the following information:~~

~~(1) the time and place of hearing;~~

~~(2) a statement of the nature of the matters to be considered;~~

~~(3) a statement of legal authority and jurisdiction under which the hearing is to be held;~~

~~(4) a short plain statement of the matters asserted. If such statement of the issues is not sufficient, upon application a more definite and detailed statement will be furnished; and~~

~~(5) a reference to the particular sections of the statutes and/or rules involved.~~

243:1-5-4. Authority to subpoena witnesses [REVOKED]

~~The Board or its designated hearing examiner shall have the power to subpoena witnesses and administer oaths or to subpoena documentary evidence in any cause before it. All subpoenas shall be served in like manner as if issued from the District Court. Any person who is a party to hearing before the Board shall have the right to have subpoenas issued for witnesses or to compel the production of documents.~~

243:1-5-5. Right to counsel [REVOKED]

~~Any person affected by an individual proceeding of the Board shall have the right to appear in person and by counsel, provided, however, that such counsel representing the party must be duly licensed to practice law by the Supreme Court of Oklahoma and may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses and may present evidence in his client's behalf.~~

243:1-5-6. Rules of evidence [REVOKED]

~~The formal rules of pleading and evidence need not be observed. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available, and upon request a party shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the Board. The Board's experience, technical competence and specialized knowledge shall be utilized in the evaluation of evidence.~~

243:1-5-7. Record of hearing [REVOKED]

~~(a) **Requirement.** Oral proceedings shall be electronically recorded. Copies of such recordings shall be maintained for such period as is necessary to protect the record through judicial review. Copies of the recordings shall be provided by the Board at the request of any party to the proceedings. Transcriptions of the recordings shall be borne by the party requesting same. Upon written request seasonably made by such person affected by the hearing, and at such person's expense, a full stenographic record of the proceedings shall be made by a competent court reporter. When a transcription thereof shall be made a part of the records of the Board, any other person having a direct interest therein shall be furnished a copy of such stenographic record at his expense.~~

~~(b) **Contents of record.** The record in any hearing shall include the following:~~

~~(1) all pleadings, motions and intermediate rulings;~~

~~(2) all evidence received or considered, including a statement of matters officially noted;~~

~~(3) questions or offers of proof, objections and rulings thereon;~~

~~(4) proposed findings and exceptions;~~

~~(5) the decision, opinion, report or order of the hearing officer and/or the Board; and~~

~~(6) any other evidence submitted to the hearing officer or Board in connection with consideration of the matters before it.~~

243:1-5-8. Proposed orders [REVOKED]

~~(a) If the Board has not heard the case or read the record of an individual proceeding, a final Board order adverse to a party shall not be made until a proposed order is served upon the party, and an opportunity is afforded to the party to file exceptions and present briefs and oral argument to the Board.~~

~~(b) Such proposed order shall be served upon the parties at least fifteen (15) days prior to a hearing or meeting at which the Board is to consider or render a decision on the proposed order. At such hearing or meeting, the parties shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order.~~

243:1-5-9. Final orders [REVOKED]

~~All findings of fact shall be based exclusively on the evidence presented and on matters officially noticed. A final order adverse to a party in any individual proceeding shall be in writing or stated in the record. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, upon request, a party submits proposed findings of fact, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail or any order. A copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record, if any.~~

243:1-5-10. Rehearings [REVOKED]

~~(a) **Request for rehearing.** At the discretion of the Board, a rehearing may be granted to any party if a written request is made therefor within ten (10) days after any order is mailed or delivered to the person entitled to receive same.~~

~~(b) **Contest of request grounds.** In the request for rehearing, the party shall set forth one or more of the following grounds:~~

~~(1) newly discovered and newly available evidence relevant to the issues;~~

~~(2) need for additional evidence to adequately develop the facts essential to proper decision;~~

~~(3) probable error committed by the Board and/or Board in the proceeding or in his decision such as would be ground for reversal on judicial review of the order;~~

~~(4) need for further consideration of the issues and the evidence in the public interest; or~~

~~(5) a showing that issues not previously considered ought to be examined in order to properly dispose of the matter.~~

243:1-5-11. Judicial review [REVOKED]

~~Any party aggrieved by a final order of the Board in an individual proceeding may seek judicial review in accordance with the provisions of Section 318 of the Administrative Procedures Act.~~

243:1-5-12. Declaratory ruling [REVOKED]

~~(a) The Board may honor requests from interested persons for interpretative opinions as to the applicability of any rule or order, if it be shown that an actual case, controversy, or issue is in contemplation and that unreasonable hardship, loss or delay would result if the matter were not determined in advance.~~

~~(b) The request should set forth the following information:~~

~~(1) the name and address of the person or entity requesting the declaratory ruling;~~

~~(2) the full text of the rule involved;~~

~~(3) the basis for requesting the declaratory ruling, including the basis for contesting the validity of the rule, if applicable; and~~

~~(4) any court cases, Attorney General's opinions, or other explanatory material supporting the position of the person or entity seeking the ruling.~~

~~(c) Upon receipt of the request, the Board shall proceed to set the matter for hearing in accordance with Sections 309-323 of the Oklahoma Administrative Procedures Act and Subchapter 5 of these Chapter 1 rules.~~

~~(d) Any person aggrieved by a declaratory ruling of the Board may seek a review of the decision of the Board in accordance with Sections 317 through 323 of the Oklahoma Administrative Procedures Act and Section 1-5-11 of these Chapter 1 rules. Nothing herein shall impair the right of any person to seek a declaratory judgment respecting a rule's validity in accordance with Section 306 of the Oklahoma Administrative Procedures Act.~~

SUBCHAPTER 7. PROCEDURES FOR INSPECTING AND/OR COPYING PUBLIC RECORDS [REVOKED]

243:1-7-1. Purpose [REVOKED]

~~The provisions of this Subchapter set forth the procedures of the Board for public inspection and/or copying of the public records of the Board. Such procedures are established for purposes of complying with the provisions of the Open Records Act as defined in 243:1-7-2 and Section 302 of the Oklahoma Administrative Procedures Act (75 O.S., Section 302). Nothing herein is intended to derogate from or be in conflict with the provisions of the Open Records Act. To the extent any provision of this Subchapter is found to be in conflict with any provision of the Open Records Act, the provisions of the Open Records Act shall govern.~~

243:1-7-2. Definitions [REVOKED]

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

~~**"Open Records Act"** means the most recent codification of the Oklahoma Open Records Act, 51 O.S. Sections 24A1 through 24A19.~~

243:1-7-3. Record Custodians [REVOKED]

~~(a) **Authority of record custodians.** The persons designated in (b) and (c) of this Section shall serve as Record Custodians for purposes of the Open Records Act and are hereby charged with responsibility for compliance with said Open Records Act pursuant to the procedures set forth in this Section and elsewhere in this Subchapter.~~

~~(b) **Appointment of Record Custodians.** The following officials of the Board are hereby appointed as Record Custodians for the designated records and as such shall have all the powers and duties set forth in this Subchapter and in the Open Records Act:~~

~~(1) Executive Director - all records of the Board~~

~~(2) Chairman of the Board - all records of the Board~~

~~(c) **Substitute Record Custodians.** Each of the Record Custodians appointed in subsection (b) of this Section is hereby authorized to designate any other employee of the Board to serve as Record custodian in the place of the designated Record Custodian. Such substitute Record Custodian shall have the same duties and powers as the Record Custodian and wherever the term "Record Custodian" is used in this Subchapter, it shall include any such substitute Record Custodian. Whenever a Record Custodian shall appoint another person as a substitute Record Custodian, he or she shall notify the Executive Director of such designation and the Executive Director shall maintain a register of all such designations.~~

~~(d) **Duties.** All Record Custodians shall:~~

~~(1) protect the public records of the Board from damage and disorganization;~~

~~(2) prevent excessive disruption of the essential functions of the Board;~~

~~(3) provide assistance and information upon request;~~

~~(4) insure efficient and timely action and response to all applications for inspection and/or copying of public records; and~~

~~(5) carry out the procedures adopted by this Board for inspecting and/or copying public records.~~

~~(e) **Direction of requests to custodians.** All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Open Records Act shall address their requests to the Record Custodian charged with responsibility for the maintenance of the record sought to be inspected or copied. Whenever a Record Custodian is presented with a request for inspection or copy of, a public~~

~~record which record the Record Custodian does not have in his or her possession and which he or she has not been given responsibility to keep and maintain, the Record Custodian shall so advise the person requesting the record. Further, the person makingthe request shall be informed as to which custodian the request should be addressed, if such is known by the Record Custodian receiving the request.~~

243:1-7-4. Hours of inspection [REVOKED]

~~All public records of the Board shall be available for inspection during the regular business hours of the Board. Such hours shall be 8:30 a.m. to 5:30 p.m. Monday through Friday, except legal holidays.~~

243:1-7-5. Procedures for inspection of records [REVOKED]

~~(a) **Requests for inspection.** To inspect a public record in the possession of the Board, a written request shall be delivered to the Record Custodian responsible for the requested record designated in 243:1-7-3. Such request shall be accompanied by the fees set forth in 243:1-7-7. The request shall have REQUEST FOR RECORD INSPECTION written across the top. All record inspection requests must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian may require reasonable identification of any person requesting a record.~~

~~(b) **Place of inspection.** All inspections of public records shall be performed in the offices of the Board under the supervision of the Record Custodian.~~

~~(c) **Identification of records.** A written request for inspection of a record shall reasonably describe the record sought. In instances where the person requesting the record cannot provide sufficient information to identify a record, the Record Custodian shall assist in making such identification.~~

~~(d) **Delay or denial of requests for inspection.** If the record requested is not available for inspection at the time requested, within three (3) business days following the day the request for inspection is received by the Record Custodian, the Record Custodian shall, in writing, notify the person requesting the record:~~

~~(1) that the record will be available for inspection at a later time; or~~

~~(2) that the record will not be available for inspection.~~

243:1-7-6. Procedures for copying records [REVOKED]

~~(a) **Requests for copies.** To obtain a copy of a public record in the possession of the Board, the person requesting the copy shall deliver a written request to the Record Custodian responsible for the requested record designated in 243:1-7-3; except that a written request shall not be required for requests made for records which have been reproduced for free public distribution. The designation REQUEST FOR RECORD COPY shall be legibly written or typed at the top of the request. Such request shall be accompanied by the fees set forth in 243:1-7-7. All record copy requests must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian may demand reasonable identification of any person requesting a record.~~

~~(b) **Responsibility for making copies.** All copies of public records shall be performed by the Record Custodian in the offices of the Board except where the Record Custodian determines that the size or the volume of records to be copies warrants sending the record outside the Board for copying, in which event the copies shall be made at a place selected by the Record Custodian and under the supervision of the Record Custodian.~~

~~(c) **Identification of records.** A written request for copies of a record shall reasonably describe the record sought. In instances where the person requesting the copies cannot provide sufficient information to identify a record, the Record Custodian shall assist in making such identification.~~

~~(d) **Delay or denial of requests for copies.** If the record requested is not available for copying at the time requested, within three (3) business days following the day the request for copies is received by the Record Custodian, the Record Custodian shall notify the person requesting the copies:~~

~~(1) that the record will be available for copying at a later time; or~~

~~(2) that the record will not be available for copying.~~

243:1-7-7. Fees [REVOKED]

~~(a) **Amounts payable.** The following are the fees that shall be charged by the Board for copying and/or mechanical reproduction of public records and for the search for public records requested by the public pursuant to the Open Records Act; provided, however, no record search and/or copying charge shall be assessed against officers or employees of the Board who make requests which are reasonably necessary to the performance of their official duties:~~

~~(1) **Inspection fees.** No fee shall be charged for inspection of a public record in the offices of the Board.~~

~~(2) **Copying fees.** The following fees shall be charged for copies of public records:~~

~~(A) 8 1/2" by 14" or smaller - $.25 per page~~

~~(B) larger than 8 1/2" b 14" - $1.00 per page~~

~~(C) certified copy 8 1/2" by 14" or smaller - $1.00 per page~~

~~(D) certified copy larger than 8 1/2" by 14" - $2.00 per page~~

~~(3) **Fee for mechanical reproduction.** For copying a public record which cannot be reproduced by photocopying, such as a computer printout or a blueprint, or where the size of the record to be copied warrants sending the record outside for copying, the person requesting the record shall be charged the actual cost to the Board of such copying, including the cost of labor, materials and equipment.~~

~~(4) **Search fee.** If the person requesting a record is using the record solely for a commercial purpose, a search fee shall be charged equal to $20.00 per hour for the time spent by employees in retrieving the record.~~

~~(b) **Prepayment of fees.** The Record Custodian may require prepayment of estimated fees for requests for public records and shall require prepayment of a fee whenever the estimated~~

~~amounts exceeds $200.00. The prepayment amount shall be an estimate of the costs of copying, mechanical reproduction and/or searching for the record. Any overage or underage in the prepayment amount shall be settled prior to producing the requested record or delivering the copy or mechanical reproduction of the record to the person requesting the record.~~

[OAR Docket #19-642; filed 6-20-19]

TITLE 243. OKLAHOMA ENERGY RESOURCES BOARD
CHAPTER 10. REFUND PROCEDURES [REVOKED]

[OAR Docket #19-643]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [REVOKED]
243:10-1-1 through 243:10-1-3 [REVOKED]
Subchapter 3. Refund Procedures [REVOKED]
243:10-3-1 through 243:10-3-6 [REVOKED]
AUTHORITY:
Oklahoma Energy Education and Marketing Act; Title 52, Sections 288.1 through 288.12, of the Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 20, 2018
COMMENT PERIOD:
November 20, 2018 through January 16, 2019.
PUBLIC HEARING:
None held or requested
ADOPTION:
March 12, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
November 1, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The permanent rulemaking action revokes administrative rules that are no longer necessary for the operations of OERB. The revocation of administrative rules will not have any impact on the services or programs administered by OERB.
CONTACT PERSON:
Mindy Stitt, Executive Director, (405) 601-2277, mstitt@oerb.com

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

243:10-1-1. Purpose [REVOKED]

~~The provisions of this Chapter have been adopted for the purpose of carrying out the provisions of the Act as such Act relates to a refund of the Assessment authorized under Section 288.A of the Act.~~

243:10-1-2. Statutory citations [REVOKED]

~~Citations to statutes in this Chapter refer to the most recent codification of the Oklahoma Energy Education and Marketing Act.~~

243:10-1-3. Definitions [REVOKED]

~~Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Energy Education and Marketing Act shall have the meanings set forth in such act. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:~~

~~**"Act"** means the most recent codification of the Oklahoma Energy Education and Marketing Act, 52 O.S. Sections 288.1 through 288.12.~~

~~**"Administrative Fee"** means the fee of the Oklahoma Tax Commission to defray the costs of receiving and depositing the Assessments, which Administrative Fee is set forth at Section 288.8A of Title 52 of the Oklahoma Statutes.~~

~~**"Applicant"** means the person or entity requesting a Refund.~~

~~**"Assessment"** means the assessment provided in Section 288.8A of the Act.~~

~~**"Board"** means the Oklahoma Energy Resources Board.~~

~~**"OERB"** means the Oklahoma Energy Resources Board.~~

~~**"Refund"** means the refund of the Assessment, as authorized by Section 288.9A of the Act.~~

~~**"Revolving Fund"** means the fund created in the State Treasury for the OERB to be designated the "Energy Resources Revolving Fund."~~

~~**"State"** means the State of Oklahoma.~~

SUBCHAPTER 3. REFUND PROCEDURES [REVOKED]

243:10-3-1. Payment of Assessment [REVOKED]

~~(a) The Assessment shall be deducted from the proceeds of production by the person or entity remitting gross production tax to the Oklahoma Tax Commission pursuant to Section 1001 of Title 68 of the Oklahoma Statutes, and shall be remitted to the Oklahoma Tax Commission in the same manner as provided by law for the payment of gross production tax.~~

~~(b) Assessments may be remitted quarterly in cumulative amounts of Twenty-five Dollars ($25.00) or less.~~

~~(c) Assessments are subject to the Administrative Fee.~~

243:10-3-2. Collection of Assessment [REVOKED]

~~The Board shall be responsible for taking appropriate legal actions to collect any Assessment not paid or which was not properly paid.~~

243:10-3-3. Request for Refund [REVOKED]

~~(a) Any person or entity subject to the Assessment may request a Refund. An Applicant may request a Refund only for revenues for production actually owned by the Applicant. An Applicant which redistributes revenues to a third party (or third parties) may not claim a Refund for or on behalf of said third parties. Said third parties must apply for their own Refund.~~

~~(b) Requests for a Refund must be submitted to the OERB, P.O. Box 18738, Oklahoma City, Oklahoma 73154-0738.~~

~~(c) Requests for a Refund must be made during the first three (3) calendar months following the calendar year for which the Assessment was made. Any request for a Refund postmarked later than March 31 of the calendar year immediately following the calendar year in which the Assessment was made will not be considered by the Board and will terminate any rights of the Applicant for a Refund for the preceding year.~~

~~(d) A request which is incomplete in any way will not be deemed filed until all information and/or documentation required by these Chapter 10 Rules has been submitted.~~

~~(e) Except as set forth in 243:10-3-3(g) and (h), requests for a Refund must be submitted on a form(s) prescribed by the Board, and must provide all information requested thereon, which at a minimum shall be:~~

~~(1) the name and mailing address of the Applicant;~~

~~(2) Social Security Number or Tax Identification Number of the Applicant;~~

~~(3) lease name and number;~~

~~(4) The gross revenues received at the wellhead from each lease for oil, natural gas, casinghead gas or condensate produced for each month during the calendar year for which the Refund is being requested;~~

~~(5) the Applicant's decimal ownership in the lease to the sixth place;~~

~~(6) the Applicant's net owned revenues in each lease;~~

~~(7) the amount of the Assessment paid by the Applicant per month per lease;~~

~~(8) the Refund amount requested, as adjusted for interest, for each month for which a Refund is requested;~~

~~(9) the total amount of the Refund request, including interest, per lease; and~~

~~(10) the total amount of the Refund, including interest (sum of all leases).~~

~~(f) Except as provided in 243:10-3-3(g) and (h), supporting evidence demonstrating the amount of revenues from production owned by said Applicant per lease must be attached to the Refund request. Such evidence would include copies of the check stubs received from the distributor of revenue or purchase statements showing the net revenues owned by Applicant. Applicants must disclose redistributions to third parties, if any, and deduct same as unowned revenues.~~

~~(g) In lieu of the requirements of 243:10-3-3(3) and (f), Applicants may submit a computer generated report in a spread sheet format containing all the information requested in 243:10-3-3(e). A separate spread sheet must be submitted for each lease for which a Refund is requested and must be calculated on a monthly basis. Supporting documentation need not be submitted; however, the Applicant must retain records to supports the Refund request and make same available to OERB or its representatives for audit for a period of three (3) years from the date of the filing of the Refund request. An affidavit in a form acceptable to OERB as set forth in 243:10-3-4 must accompany the Refund request.~~

~~(h) Applicants may elect to submit a yearly summary of owned revenues for each lease for which a Refund is requested rather than the monthly report described in 243:10-3-3(g). Applicants electing this alternative waive any right to interest on the Assessment. Supporting documentation need not be submitted; however, the Applicant must retain records to support the Refund request and make same available to OERB or its representatives for audit for a period of three (3) years from the date of the filing of the Refund request. An affidavit in a form acceptable to OERB as set forth in 243:10-3-4 must accompany the Refund request.~~

243:10-3-4. Affidavit [REVOKED]

~~An affidavit attesting to the accuracy of the Refund request, including the Refund amount requested, and a statement certifying to the Board that the Applicant seeking a Refund is the owner of the production for which the Refund is requested must accompany the Refund request. The affidavit shall be sworn to and signed by the Applicant under penalty of perjury and be notarized. Refund requests pursuant to 243:10-3-3(g) or (h) must be verified under oath, subject to penalty of perjury, by the chief executive officer and the controller of the Applicant. Applicants electing to waive interest on the Assessment pursuant to 243:10-3-3(h) must acknowledge same in the affidavit and release OERB, the Board and the State from any responsibility for payment of said interest.~~

243:10-3-5. Audits and verification of Refund requests [REVOKED]

~~(a) The Board may verify any Refund requests received and, if necessary, audit the party requesting a Refund.~~

~~(b) With respect to Applicants submitting supporting documentation pursuant to 243:10-3-3(f), if the Board desires to verify a Refund request, the Board shall notify the Applicant within one hundred eighty (180) days of the end of the Refund period, by certified mail, of the Board's intent to audit.~~

~~(c) With respect to any Applicant electing to submit monthly reports pursuant to 243:10-3-3(g) or an annual summary pursuant to 243:10-3-3(h), the Board may give notice of the Board's intent to audit at any time during the three year period following the Applicant's filing of a Refund request.~~

~~(d) Any Applicant receiving notice of the Board's intent to audit shall schedule a mutually acceptable date and time period on and during which the Board or its representative may examine the records of said Applicant insofar as said records pertain to the Assessment.~~

~~(e) Any Applicant receiving a request from the Board for additional evidence substantiating a Refund request must submit~~

~~such evidence within thirty (30) days of the Board's request or forfeit their right to a Refund.~~

~~(f) Any Refund which has not been made when the audit notice is issued shall be held until the audit is performed, and if said audit results are satisfactory to the Board, the Refund shall be made. If the Refund has been made when an audit notice is issued and the Board determines that the Refund made was in excess of that to which an Applicant was entitled, the Board shall take all steps necessary and permitted by law to recover same, including referral to the Oklahoma Attorney General, if the Board in its discretion determines circumstances so warrant.~~

~~(g) After audit, the Board may disallow all or part of the Refund if there is evidence the Refund is in excess of the amount of the Assessment paid by the Applicant.~~

243:10-3-6. Interest on Refund [REVOKED]

~~Refunds will include interest earned through December 31 of the Assessment in an amount equal to the average United States Treasury bill rate for the year of the Assessment as certified by the State Treasurer, unless an election under 243:10-3-3(h) is made, in which case the Applicant waives Applicant's claim to interest on the Assessment.~~

[OAR Docket #19-643; filed 6-20-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #19-689]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Incorporation by Reference
252:100-2-3. [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 7. Specific Operations
252:100-39-40. [AMENDED]
252:100-39-41. [AMENDED]
Appendix Q. Incorporation by Reference [REVOKED]
Appendix Q. Incorporation by Reference [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106; Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107; Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
August 8, 2018
COMMENT PERIOD:
September 4, 2018 through October 10, 2018
PUBLIC HEARING:
October 10, 2018, Air Quality Advisory Council
November 9, 2018, Environmental Quality Board
ADOPTION:
November 9, 2018
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 19, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards as they existed on June 30, 2018:
Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2018."
Incorporating rules:
252:100-2-3
Appendix Q. Incorporation By Reference
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.
GIST/ANALYSIS:
The Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. The gist of these rules and the underlying reason for the rulemaking is to incorporate the latest changes to EPA regulations, primarily those relating to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). The Department is proposing to amend 252:100-39-40, Cutback asphalt (paving), to correct the dates of Oklahoma's non-oxidant season, which should be December 1 through the last day of February. The gist of this rulemaking is to ensure that cutback asphalt is not used during Oklahoma's extended ozone season. The Department is proposing to amend 252:100-39-41, Storage, loading, and transport/delivery of VOCs. The gist of this rulemaking is to allow for the use of alternative testing methods for leak inspections, to revise references used for pressure and vapor testing to the most recent EPA regulations, and to update tank truck tag requirements to reflect current practices.
CONTACT PERSON:
Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 2. INCORPORATION BY REFERENCE

252:100-2-3. Incorporation by reference

Except as provided under this section, the provisions of 40 CFR listed in Appendix Q are hereby incorporated by reference as they existed on ~~June 30, 2017~~June 30, 2018.

(1) **Inclusion of 40 CFR citations and definitions.** When a provision of 40 CFR is incorporated by reference, all citations contained therein are also incorporated by reference.

(2) **Inconsistencies or duplications of requirements or incorporation dates.**

(A) In the event that there are inconsistencies or duplications between the requirements of this Chapter

and the requirements of those provisions incorporated by reference in Appendix Q or elsewhere in this Chapter, the more stringent requirements shall apply.

(B) In the event that a specific date of incorporation is indicated in Appendix Q or a subchapter of this Chapter, the specified date of incorporation shall apply.

(3) **Terminology related to 40 CFR.** For purposes of interfacing with 40 CFR and unless the context clearly indicates otherwise, the following terms apply.

(A) "Administrator" is synonymous with "Executive Director."

(B) "U. S. Environmental Protection Agency" or "EPA" is synonymous with "Department of Environmental Quality" or "DEQ."

SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCS) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

PART 7. SPECIFIC OPERATIONS

252:100-39-40. Cutback asphalt (paving)

(a) **Definitions. "Cutback asphalt"** means a basic asphalt or asphaltic concrete containing a petroleum distillate.

(b) **Requirements.** No owner, operator and/or contractor shall prepare or apply cutback liquefied asphalt without the prior written consent of the Division Director. Such consent may be granted during Oklahoma's non-oxidant season, i.e., ~~November 1 through March 31~~December 1 through the last day of February.

252:100-39-41. Storage, loading and transport/delivery of VOCs

(a) **Storage of VOCs in vessels with storage capacities greater than 40,000 gallons.** Each vessel with a capacity greater than 40,000 gal (151 m^3) which stores gasoline or any VOC shall be a pressure vessel capable of maintaining working pressures that prevent the loss of VOC vapor or gas to the atmosphere or shall be equipped with one or more of the following vapor control devices.

(1) An external floating roof, that consists of a pontoon-type or double-deck type cover or a fixed roof with an internal-floating cover. The cover shall rest on the surface of the liquid contents at all times (i.e., off the leg supports), except during initial fill, when the storage vessel is completely empty, or during refilling. When the cover is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible. The floating roof shall be equipped with a closure seal, or seals, to close the space between the cover edge and vessel wall. Floating roofs are not appropriate control devices if the VOCs have a vapor pressure of 11.1 psia (76.6 kPa) or greater under actual conditions. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place. Closure seals for fixed roof vessels with an internal-floating cover shall meet the requirements of 252:100-39-30(c)(1)(B)(i) and (ii). Closure seals for vessels with external floating roofs shall meet the requirements of 252:100-39-30(c)(1)(B)(i), (ii), and (iii).

(2) A vapor-recovery system that consists of a vapor-gathering system capable of collecting 90 percent by weight or more of the uncontrolled VOCs that would otherwise be emitted to the atmosphere and a vapor-disposal system capable of processing VOCs to prevent emissions in excess of 6.68 x 10^{-4} lb/gal (80 mg/l) of VOCs transferred. All vessel gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(3) Other equipment or methods that are of equal efficiency for purposes of air pollution control may be used when approved by the Division Director and in concert with federal guidelines.

(b) **Storage of VOCs in vessels with storage capacities of 400-40,000 gallons.**

(1) Each gasoline or other VOC storage vessel with a nominal capacity greater than 400 gal (1.5 m^3) and less than 40,000 gal (151 m^3) shall be equipped with a submerged fill pipe or be bottom filled.

(2) The displaced vapors from each storage vessel with an average daily throughput of 30,000 gal (113,562 l) or greater which stores gasoline or other VOCs shall be processed by a system that has a total collection efficiency no less than 90 percent by weight of total VOCs in the vapors.

(A) The vapor recovery system shall include:

(i) a vapor-tight return line from the storage vessel to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline or VOCs can be transferred into the storage vessel; or,

(ii) other equipment that has a total collection efficiency no less than 90 percent by weight of the total VOCs in the displaced vapor if approval is obtained from the Division Director prior to start of construction.

(B) The requirements for vapor collection of displaced vapors shall not apply to operations that are not major sources.

(c) **Loading of VOCs.**

(1) Each VOC loading facility with an annual throughput of 120,000 gal (454,249 l) or greater or storage capacity greater than 10,000 gal (38 m^3) shall be equipped with a vapor-collection and/or disposal system.

(2) While VOCs are loaded through the hatches of a transport vessel, a pneumatic, hydraulic or mechanical means shall be provided to ensure a vapor-tight seal at the hatch.

(3) A means shall be provided to prevent VOC drainage from the loading device when it is removed from the transport vessel, or to accomplish complete drainage before removal.

(4) When loading is by means other than hatches, all loading and vapor lines shall be equipped with fittings that

make vapor-tight connections and which close automatically when disconnected.

(5) The vapor collection and/or disposal portion of the system shall consist of one or more of the elements listed in 252:100-39-41(c)(5)(A) through ~~252:100-39-42(c)(5)(C)~~252:100-39-41(c)(5)(C) in addition to bottom loading or submerged fill of transport vessels. Storage vessels at service stations and bulk plants may be used for intermediate storage prior to recovery/disposal of vapors as specified in 252:100-39-41(c)(5)(A) through 252:100-39-41(c)(5)(C) if they are designed to prevent the release of vapors during use.

(A) An absorption/adsorption system or condensation system that has a minimum recovery efficiency of 90 percent by weight of all the VOC vapors and gases entering such disposal system.

(B) A vapor handling system which directs all vapors to a fuel gas incineration system with a minimum disposal efficiency of 95 percent.

(C) Other equipment that has at least a 90 percent efficiency, provided plans for such equipment are approved by the Division Director.

(6) Subsection 252:100-39-41(c) shall apply to any facility that loads VOCs into any transport vessel designed for transporting VOCs.

(d) **Transport/delivery.**

(1) The vapor-laden delivery vessel shall meet one of the following requirements.

(A) The delivery vessel must be designated and operated to be vapor tight except when sampling, gauging, or inspecting.

(B) The delivery vessel must be equipped and operated to deliver the VOC vapors to a vapor recovery/disposal system.

(2) No owner or operator shall allow a delivery vessel to be filled at a facility unable to receive displaced VOC vapors nor service vessels unable to deliver displaced vapors except for vessels and facilities exempted in 252:100-39-41(b) and 252:100-39-41(c).

(3) Testing of the tank trucks for compliance with the vapor tightness requirements must be consistent with ~~Appendix "B" EPA Guideline Series Document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA 450/2-78-051~~252:100-39-41(e)(4)(B)(ii), or an equivalent method as determined by the Division Director.

(e) **Additional requirements for Tulsa County.**

(1) **Applicability.** This subsection applies only in Tulsa County.

(2) **Storage of VOCs.**

(A) **2,000 - 40,000 gallons capacity.** Each storage vessel with a nominal capacity greater than 2,000 gal (7.6 m^3) and less than 40,000 gal (151 m^3) that stores gasoline or other VOCs or each storage vessel located at a facility that dispenses more than 120,000 gal/yr of gasoline or other VOCs, in addition to being equipped with a submerged fill pipe or being bottom loading, shall be equipped with a vapor control system. The vapor control system shall have an efficiency of no less than 90 percent by weight of the VOCs contained in the displaced vapors and shall be equipped with a pressure relief valve in the atmospheric vent system which maintains a pressure of 16 oz/in.^{2} and l/2 oz/in.^{2} vacuum. The vapor recovery system shall include one or more of the following.

(i) A vapor-tight return line from the storage vessel to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline or VOCs can be transferred into the storage vessel (i.e., poppeted connectors from the storage vessel to the delivery vessel~~.~~).

(ii) A float vent valve assembly installed in the vapor return/vent line on new and existing dual point installations; however, for coaxial installations on existing stations, a vent sleeve extending 6 in. (15 cm) below the top of the vessel will be allowed. Sleeves may be equipped with a 1/16 in. (0.16 cm) air bleed hole.

(iii) A vapor recovery line with a cross-sectional area that is at least half of the cross-sectional area of the liquid delivery line.

(iv) Other equipment that has a total collection efficiency no less than 90 percent by weight of the total VOCs in the displaced vapor if approved by Division Director prior to start of construction.

(B) **Applicability.**

(i) Any vessel with a capacity greater than 2,000 gal (7.6 m^3) or any vessel located at a facility that dispenses more than 120,000 gal/yr (454,249 l/yr) shall be and will always remain subject to 252:100-39-41(e)(2). ~~(effective February 12, 1990).~~

(ii) Exemptions to 252:100-39-41(e)(2) may be granted if the owner or operator shows to the satisfaction of the Division Director that the vessel is used exclusively for agricultural purposes.

(C) **Emission testing.** If emission testing is conducted, the appropriate test methods selected from EPA Methods 1 through 4, 18, 21, 25, 25A and 25B shall be utilized.

(D) **Compliance.** Compliance with 252:100-39-41(e)(2) shall be accomplished by the owner or operator of affected facilities by December 31, 1986.

(E) **Certification.** The owner or operator of a facility shall obtain, by whatever means practicable, certification from the owner or operator of the transport/delivery vessels that all deliveries of gasoline or other VOCs made to their 400-gallon to 40,000-gallon storage facility located in Tulsa County shall be made by transport/delivery vessels that comply with the requirements contained in 252:100-39-41(e)(4). Compliance with 252:100-39-41(e)(2) shall be accomplished by owners or operators of affected facilities no later than December 31, 1990. ~~(Effective February 12, 1990)~~

(3) **Loading of VOCs.** In addition to those requirements contained in 252:100-39-41(c), stationary loading facilities shall be checked annually in accordance with EPA Test Method 21~~, Leak Test~~ or an alternative work practice for monitoring equipment for leaks consistent with 40 CFR Section 60.18(g) through 60.18(i). Leaks greater than 5,000 ppmv measured by EPA Test Method 21 or leaks detected by an alternative work practice for monitoring equipment leaks, shall be repaired within 15 days. Facilities shall retain inspection and repair records for at least two years.

(4) **Transport/delivery vessel requirements.** In addition to the requirements contained in 252:100-39-41(d), facilities located in Tulsa County must meet the following requirements.

(A) **Maintenance.**

(i) The delivery vessel must be maintained so that it is vapor tight except when sampling, gauging, or inspecting. These activities shall not occur while the vehicle is loading or unloading or is in a pressurized state.

(ii) The delivery vessel must be equipped, maintained, and operated to receive vapors from sources identified in 252:100-39-41(b)(1) and 252:100-39-41(b)(2) and retain these and all other vapors until they are delivered into an authorized vapor recovery/disposal system.

(iii) Vessels with defective equipment such as boots, seals, and hoses, or with other deficiencies that would impair the vessels' ability to retain vapors or liquid shall be repaired within 5 days.

(iv) The certified testing facility must certify to the approving agency that the proper testing and repairs have occurred in accordance with ~~252:100-39-41(e)(4)(B)(i)~~252:100-39-41(e)(4)(B)(ii). ~~The vessel must also display on the rear panel a tag showing the date of the pressure test.~~

(v) No owner or operator shall allow a delivery vessel to be filled at a facility unable to receive displaced VOCs nor service vessels unable to deliver displaced vapors except for vessels/facilities exempted in 252:100-39-41(b). Terminal owners shall not fill vessels that do not ~~display a current tag~~have a current certified pressure test on file.

~~(vi) Delivery vessels may be inspected by representatives of the DEQ in order to determine their state of repair. Such a test may consist of a visual inspection or a vapor test with vapors not to exceed 5,000 ppmv. Failure of a vapor test shall require the owner or operator to make the necessary repairs within 10 days. Failure to certify within 10 days of a vapor test that the necessary repairs have been made shall subject the owner or operator to sanctions. Upon certification of repairs, the vessel will be allowed to resume normal operation.~~

(B) **Inspection and testing~~Testing~~ requirements.**

(i) **Inspection.** Delivery vessels may be inspected by representatives of the DEQ in order to determine their state of repair. Such inspection may consist of a visual inspection or a vapor test specified in 252:100-39-41(e)(4)(B)(iii). Any vapor test that detects vapors exceeding 5,000 ppmv, or visual inspection, with or without imaging instrumentation, that detects emissions, shall require the owner or operator to make the necessary repairs within 5 days. Failure to certify within 10 days of a vapor test or visual inspection that the necessary repairs have been made may subject the owner or operator to enforcement. Upon certification of repairs, the vessel will be allowed to resume normal operation.

(~~i~~ii) **Pressure test.**

(I) Delivery vessels, delivering or receiving gasoline must be tested one time per year for vapor tightness. The vapor tightness test must be consistent with ~~Appendix "A" EPA Guideline Series Document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", EPA 450/2-78-051~~EPA Test Method 27. Tests shall be performed by the owner or a transport service company. Test methods used to test these vessels by owners or testing companies must be approved for use by the Division Director.

(II) The vessel shall be considered to pass the test prescribed in ~~252:100-3941(e)(4)(B)(i)(I)~~252:100-39-41(e)(4)(B)(ii)(I) when the test results show that the vessel and its vapor collection systems do not sustain a pressure change of more than ~~3 in.~~75 mm H_2O within 5 minutes after it is pressurized to 450 mm H_2O. There shall be no avoidable visible liquid leaks.

(~~ii~~iii) **Vapor test.** Testing of the tank trucks for compliance with vapor tightness requirements as required under ~~252:100-39-41(e)(4)(A)(vi)~~252:100-39-41(e)(4)(B)(i) must be consistent with ~~Appendix "B" EPA Guideline Series Document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", EPA 405/2-78-051, as modified for this purpose in Section 252:100-39-41.1~~EPA Test Method 21. ~~The requirements of 252:100-39-41(e) took effect December 15, 1988.~~

APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]

APPENDIX Q. INCORPORATION BY REFERENCE [NEW]

Except as provided under OAC 252:100-2-3, the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on June 30, 2018, unless otherwise noted.

PART	SUBPART	DESCRIPTION
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere
51	A	Table 1 to Appendix A only of Subpart A—Emission Thresholds by Pollutant for Treatment as Point Source Under 40 CFR 51.30
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
51	n/a	Appendix W to Part 51 – Guideline on Air Quality Models
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for Monitors used in Evaluations of National Ambient Air Quality Standards
58	n/a	Appendix B to Part 58 – Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators
60	Da	Standards of Performance for Electric Utility Steam Generating Units
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
60	Dc	Standards of Performance for Small Industrial-Commercial-

PART	SUBPART	DESCRIPTION
		Institutional Steam Generating Units
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	Ga	Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

PART	SUBPART	DESCRIPTION
60	L	Standards of Performance for Secondary Lead Smelters
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After

PART	SUBPART	DESCRIPTION
		August 17, 1983
60	BB	Standards of Performance for Kraft Pulp Mills
60	BBa	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006

PART	SUBPART	DESCRIPTION
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for SO_2 Emissions From Onshore Natural Gas Processing: SO_2 Emissions
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

PART	SUBPART	DESCRIPTION
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills
60	XXX	Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	CCCC	New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
60	DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006
60	IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

PART	SUBPART	DESCRIPTION
60	JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	LLLL	Standards of Performance for New Sewage Sludge Incineration Units
60	OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015
60	OOOOa	Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015
60	TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury
61	F	National Emission Standard for Vinyl Chloride
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production

PART	SUBPART	DESCRIPTION
		Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities

PART	SUBPART	DESCRIPTION
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
63	JJ	National Emission Standards for Wood Furniture Manufacturing

PART	SUBPART	DESCRIPTION
		Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
63	NN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

PART	SUBPART	DESCRIPTION
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

PART	SUBPART	DESCRIPTION
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
63	QQQQ	National Emission Standards for Hazardous Air Pollutants:

PART	SUBPART	DESCRIPTION
		Surface Coating of Wood Building Products
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
63	DDDDD	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters
63	EEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site

PART	SUBPART	DESCRIPTION
		Remediation
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
63	KKKKK	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining
63	UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-fired Electric Utility Steam Generating Units
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

PART	SUBPART	DESCRIPTION
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	JJJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources

PART	SUBPART	DESCRIPTION
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
63	CCCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
63	DDDDDDD	National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing
63	EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
63	HHHHHHH	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
64	n/a (All Sections)	Compliance Assurance Monitoring (CAM)
72	All Subparts	Permits Regulation
98	A	Table A-1 only to Subpart A of Part 98 – Global Warming Potentials

PART	SUBPART	DESCRIPTION
241	n/a	Solid Wastes Used as Fuels or Ingredients in Combustion Units

[OAR Docket #19-689; filed 6-27-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #19-691]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 1. General Provisions
252:100-39-4. [AMENDED]
Part 3. Petroleum Refinery Operations
252:100-39-16. [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106; Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107; Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2018
COMMENT PERIOD:
September 4, 2018 through October 10, 2018 [252:100-39-4]
December 3, 2018 through January 16, 2019 [252:100-39-4; 252:100-39-16]
PUBLIC HEARING:
October 10, 2018, Air Quality Advisory Council [252:100-39-4]
January 16, 2019, Air Quality Advisory Council [252:100-39-4; 252:100-39-16]
February 15, 2019, Environmental Quality Board [252:100-39-4; 252:100-39-16]
ADOPTION:
February 15, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The Department is proposing to amend 252:100-39-4, Exemptions, to remove an incorrect citation to a revoked rule. The gist of this rulemaking is to remove an incorrect citation to a revoked rule. The Department is proposing to amend 252:100-39-16, Petroleum refinery process unit turnaround, to correct the dates of Oklahoma's non-oxidant season, which should be December 1 through the last day of February. The gist of this rulemaking is to ensure that controls are used when accomplishing refinery unit turnarounds during Oklahoma's extended ozone season.
CONTACT PERSON:
Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCS) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

PART 1. GENERAL PROVISIONS

252:100-39-4. Exemptions

VOCs with vapor pressures less than 1.5 pounds per square inch absolute (psia) under actual storage conditions are exempt from 252:100-39-16 through 252:100-39-18, 252:100-39-30, and 252:100-39-41~~, and 252:100-48~~.

PART 3. PETROLEUM REFINERY OPERATIONS

252:100-39-16. Petroleum refinery process unit turnaround

(a) **Definition. "Turnaround"** means the planned procedure of shutting down a unit, inspecting and repairing it, and restarting it.

(b) **Procedures required.** For the shutdown, purging and blowdown operation of any petroleum refinery processing unit the following procedures are required:

(1) Recovery of VOCs shall be accomplished during the shutdown or turnaround to a process unit pressure compatible with the flare or vapor system pressure. The unit shall then be purged or flushed to a flare or vapor recovery system using a suitable material such as steam, water or nitrogen. The unit shall not be vented to the atmosphere until pressure is reduced to less than 5 psig through control devices.

(2) Except where inconsistent with the "Minimum Federal Safety Standards for the Transportation of Natural and Other Gas by Pipeline," or any State of Oklahoma regulatory agency, no person shall emit VOC gases to the atmosphere from a vapor recovery blowdown system unless these gases are burned by smokeless flares or an equally effective control device as approved by the Division Director.

(3) At least fifteen days prior to a scheduled turnaround, a written notification shall be submitted to the Division Director. As a minimum, the notification shall indicate the unit to be shutdown, the date of shutdown, and the approximate quantity of VOCs to be emitted to the atmosphere.

(4) Scheduled refinery unit turnaround may be accomplished without the controls specified in 252:100-39-16(b)(1) and 252:100-39-16(b)(2) during non-oxidant seasons provided the notification to the Division Director as required in 252:100-39-16(b)(3) specifically contains a request for such an exemption. The non-oxidant season is from ~~November 1 through March 31~~December 1 through the last day of February.

[OAR Docket #19-691; filed 6-27-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #19-692]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]
AUTHORITY:
Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties; 27A O.S. §§ 2-2-101, 2-2-201, 2-2-104, 2-7-105 and 2-7-106.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
August 8, 2018
COMMENT PERIOD:
September 1, 2018 through October 11, 2018
PUBLIC HEARING:
October 11, 2018
February 15, 2019
ADOPTION:
February 15, 2019
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE DATE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2018".
Incorporating rules:
252:205-3-1
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.
GIST/ANALYSIS:
The gist of this rulemaking is to make DEQ's hazardous waste rules consistent with the federal regulations by incorporating by reference the regulations found in 40 CFR Parts 124 and 260-279, revised as of July 1, 2018. Significant federal rule changes which will be incorporated include: Establishing EPA user fees for electronic and paper manifests; new EPA rules related to Confidentiality Determinations for Hazardous Waste Export and Import Documents; and revisions to EPA's Definition of Solid Waste (DSW) rule resulting from court decisions vacating certain provisions. This rulemaking will ensure that Oklahoma's hazardous waste rules are at least equivalent to the federal rules.
CONTACT PERSON:
Mike Edwards (405) 702-5226, 707 North Robinson, Oklahoma City, Oklahoma 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is mike.edwards@deq.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified):

(1) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, ~~2017~~2018, and

(2) the revisions to 40 CFR published at 80 FR 1694 - 1814 (January 13, 2015), "Definition of Solid Waste: Final Rule," except as identified in 252:205-3-2~~.~~, and the revisions to 40 CFR published at 83 FR 2464 - 24671 (May 30, 2018), "Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule."

[OAR Docket #19-692; filed 6-27-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 301. LABORATORY ACCREDITATION

[OAR Docket #19-693]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:301-1-3. Definitions [AMENDED]
252:301-1-4. Terms [AMENDED]
252:301-1-7. General water quality laboratory [AMENDED]
252:301-1-9. Fees [AMENDED]
Subchapter 3. Laboratory Accreditation Process
Part 1. Application
252:301-3-3. Operational information [AMENDED]
Part 5. Grounds to Revoke
252:301-3-51. Grounds to take enforcement action [AMENDED]
Subchapter 5. General Operations
252:301-5-4. On-site ~~inspections~~ evaluation[AMENDED]
Subchapter 7. Proficiency Testing
252:301-7-2. Participation required [AMENDED]
Subchapter 9. Quality Assurance/Quality Control
Part 3. Standard Operating Procedures and Methods Manual
252:301-9-37. Methodology incorporated by reference [AMENDED]
Part 5. QA/QC Program Requirements
252:301-9-51. QA/QC program required [AMENDED]
252:301-9-54. Inorganic~~/classic~~ chemistry [AMENDED]
252:301-9-57. Support equipment [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S. § 2-2-101; Water Quality Management Advisory Council; 27A O.S. § 2-2-201; and 27A O.S. §§ 2-4-101, 2-4-201, 2-4-301, 2-4-302 and 2-4-303.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2018
COMMENT PERIOD:
December 3, 2018 to January 2, 2019
PUBLIC HEARING:
Before the Council on January 8, 2019, and before the Environmental Quality Board on February 15, 2019
ADOPTION:
February 15, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Date of 40 CFR 141provisions incorporated by reference in these rules is changed to "as published on July 1, 2018."
Incorporating rules:
252:301-9-37
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at State Environmental Laboratory Service Division, Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, 405-702-1000
GIST/ANALYSIS:
The gist of this rule and the underlying reason for the rulemaking is to make the Laboratory Accreditation Rules internally consistent, to update accreditation requirements to reflect current EPA standards for analysis, and to make program fees more accurately reflect the Department's full cost for performing laboratory accreditation and reduce reliance on State appropriated funds. By vote of the WQMAC at the council meeting on January 8, 2019, temperature was added to 252:301-1-7(b) to the basic environmental laboratory analytes and 252:301-1-9(e) language was added, not to exceed $10,000 per individual laboratory, to the onsite evaluation fee.
CONTACT PERSON:
David Caldwell, (405) 702-1000 or david.caldwell@deq.ok.gov The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

252:301-1-3. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*) and OAC 252:4 (Department of Environmental Quality Rules of Practice and Procedure), the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Acceptable results", as defined in 27A O.S. § 2-4-101, means *a result within limits determined on the basis of statistical procedures as prescribed by the Department*.

"Accreditation" means the process by which the DEQ recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory.

"Analyte" means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure and is synonymous with "parameter." For purposes of this Chapter, "analyte" also means one of a set of inorganic or organic chemical, physical, radiochemical or microbiological properties whose value determines the characteristics of a water or wastewater sample.

"Applicant" means the owner of a laboratory, or a representative authorized by the owner to act on the owner's behalf, seeking accreditation from the DEQ.

"Applicant laboratory" means the laboratory and its owner or authorized representative for which an application for accreditation has been filed with the DEQ.

"Approved method" means an analytical test method which has been required by law or is recognized by the DEQ as acceptable for a specific usage.

"Blind audit" means a process whereby the DEQ or any other designated agent submits proficiency testing samples to an accredited laboratory in a manner such that the laboratory is not aware of the process.

"Certificate" is defined in 27A O.S. § 2-4-101 and means the same as laboratory accreditation and includes primary accreditation and reciprocity accreditation.

"Corrective Action Plan" is a written plan of action, including a schedule for implementation, to correct deficiencies identified in the DEQ or DEQ-approved agent's inspection report, including a timeline for implementation; or to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent its recurrence.

"Critical Finding" means a conclusion of noncompliance that would require an immediate corrective action or an immediate stop to testing.

"DEQ" means the Oklahoma Department of Environmental Quality. For purposes of certifications issued and enforcement matters arising prior to July 1, 1993, "DEQ" also means predecessor agencies of the DEQ which had jurisdiction over environmental water quality laboratories on June 30, 1993.

"Evaluation", as defined in 27A O.S. § 2-4-101, *means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific parameters.*

"Finding" means a conclusion of noncompliance of the evaluation process supported by objective evidence.

"Initial accreditation" means a first-time accreditation granted to a laboratory not previously accredited by the DEQ.

"Interim accreditation" means an out-of-time accreditation issued to a DEQ accredited laboratory in analytes for which the laboratory is not currently accredited by the DEQ.

"Laboratory", as defined in 27A O.S. § 2-4-101, means *a facility that performs analyses to determine the chemical, physical or biological properties of air, water, solid waste, hazardous waste, wastewater or soil or subsoil materials or performs any other analyses related to environmental quality evaluations.* "Laboratory" includes mobile laboratories.

"Laboratory waste" means by-products of the analytical process, residues of samples analyzed, discarded reagents or standards and any materials contaminated by any of these.

"Mobile laboratory" means a mobile facility that performs analyses in a self-contained environment with professional analytical instrumentation, excluding field testing of those analytes that require immediate measurement on site

(conductivity, residual chlorine, pH, dissolved oxygen, temperature).

"Owner" means the sole proprietor of an individually owned laboratory, the controlling or managing partner of a laboratory held by a partnership, the major stockholders of a corporate owned laboratory, or a municipality or other local government entity which owns or operates a laboratory.

"Parameter" is defined in 27A O.S. § 2-4-101 and is synonymous with "analyte."

"Proficiency testing (PT) sample" means a sample submitted to a laboratory by the DEQ or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using an approved method.

"Program" means the DEQ laboratory accreditation program.

"QA Plan" or **"Quality Assurance Plan"** means a written description of quality assurance activities (quality control) that will ensure the generation of data that are scientifically valid, defensible, and of known and acceptable limits of precision and accuracy.

"SOP manual" or **"Standard Operating Procedure manual"** means a document approved by a laboratory director that includes approved methods, equipment and instruments used by the laboratory for analyses.

252:301-1-4. Terms

Terms used in this Chapter shall have the meanings given to them in OAC ~~252:320-1-2~~252:301-1-2 or the Oklahoma Environmental Quality Code. Any technical term not defined thereby shall be defined by its generally accepted scientific meaning or its standard dictionary meaning.

252:301-1-7. General water quality laboratory

(a) **Category groups.** A general water quality laboratory may be accredited in the following category groups: metals, nutrients, demands, extractable organics, general chemistry I and/or II, microbiology, pesticides - herbicides - PCBs, purgeable organics, radiological, bioassay, hazardous waste characterization, petroleum hydrocarbons, perchlorate, and/or basic environmental laboratory.

(b) **Basic environmental laboratory analytes.** Basic environmental laboratory analytes include: temperature, five day biochemical oxygen demand, carbonaceous biochemical oxygen demand, chemical oxygen demand, total organic carbon (TOC), total Kjeldahl nitrogen (TKN) , nitrate-nitrite nitrogen, organic nitrogen, ammonia nitrogen, total dissolved solids (filterable residue), total suspended solids (non-filterable residue), volatile residue, total phosphorous, orthophosphate phosphorus (reactive phosphorus), chloride, fluoride, oil and grease, sulfate, pH, specific conductance, dissolved oxygen, turbidity, total residual chlorine, hardness, alkalinity, color, fecal coliform, Escherichia coli, total coliform, cyanide, phenolics, copper, zinc, iron, sulfide, chromium, and hexavalent chromium.

252:301-1-9. Fees

(a) **Applicable fees.** The following fees apply:

(1) Initial accreditation $1,140.00
(2) Interim accreditation 671.00
(3) Renewal fee 34.00
(4) Renewal late fee 335.00
(5) Accreditation amendment 67.00
(6) Fee for 1 category 470.00
(7) Fee for 2 categories 940.00
(8) Fee for 3 categories 1,410.00
(9) Fee for 4 categories 1,880.00
(10) Fee for 5 or more categories 2,350.00
(11) ~~Inspections~~On-site evaluation ~~0~~ Reimbursable Expense

(b) **Renewal.** Fees to renew accreditation consist of the renewal application fee and the applicable category fee.

(c) **Public water supply system fee exemption.** There is no laboratory accreditation fee for public water supply systems that pay the minimum annual public water supply regulatory service rate fee in accordance with 27A O.S. § 2-6-306.

(d) **Annual fee adjustment.** To assist in meeting rising costs to the DEQ of the environmental services and regulatory programs associated with the laboratory accreditation program, the fees set out in this Section shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(e) An On-site evaluation fee shall be calculated at actual cost, not to exceed $10,000 per individual laboratory, and includes but is not limited to the following: assessor(s) time and labor (preliminary document review, total travel, time-on-site, report preparation, and corrective action review), transportation, per diem (if required), as described in 252:301-5-4. The

on-site evaluation will be invoiced at the closing of the evaluation.

SUBCHAPTER 3. LABORATORY ACCREDITATION PROCESS

PART 1. APPLICATION

252:301-3-3. Operational information

The application shall address the following operational issues:

(1) A listing of equipment to be used for sample analysis, storage, and reporting.

(2) A description of the methods, equipment, and instruments used by the applicant laboratory for specific analytes which may be in the form of an SOP manual when required.

(3) A written laboratory QA plan which includes but is not limited to:

(A) A listing of laboratory personnel, including the laboratory director, which gives the academic training, experience, and analytical and supervisory responsibilities of each; and

(B) A narrative description of the methods used for sample receipt, storage, and disposal.

(4) Results of laboratory's two most recent proficiency testing rounds, at least 15 calendar days apart.

(5) A report of a laboratory ~~inspection~~evaluation conducted by the DEQ or a DEQ approved ~~agent~~ assessor within the twelve (12) months prior to the date of filing or, for in-state laboratories only, a letter requesting the DEQ to conduct an on-site ~~inspection~~evaluation. The ~~inspection~~evaluation report shall verify data submitted in an application, list any deficiencies and be signed by the DEQ or DEQ approved agent.

(6) If deficiencies are listed in an ~~inspection~~evaluation report, the applicant shall submit a corrective action plan which specifies deadlines for implementation and completion of the plan. The DEQ may establish conditions, including compliance schedules, for the applicant's corrective action plan.

(7) Hours of operation.

PART 5. GROUNDS TO REVOKE

252:301-3-51. Grounds to take enforcement action

In addition to the grounds listed in 27A O.S. §2-3-501 *et seq*., § 2-4-305(A) and OAC 252:4-7-15, the DEQ may suspend, revoke or refuse to renew in part or in whole the accreditation of any laboratory for the following grounds:

(1) consistent and significant errors in analyses, erroneous reporting or evidence of professional or technical incompetence;

(2) misrepresentation to others regarding the type and conditions of DEQ accreditation and the reliance of others on such misrepresentation;

(3) failure to perform any of the following:

(A) to correct deficiencies, comply with a corrective action plan, or take other action required by the DEQ pursuant to these rules;

(B) to participate or produce acceptable results in required proficiency testing;

(C) to cooperate with or allow on-site laboratory evaluations, inspections, or access to records; or

(D) failure to notify or submit reports to the DEQ as required by this Chapter

(4) submission of a proficiency testing sample to another laboratory for analysis, and reporting data received as its own;

(5) collaboration with other laboratories on results before proficiency testing sample results are submitted to the required agency;

(6) allowing persons other than qualified laboratory employees to perform and report results of accredited analytes;~~ or~~

(7) any other violation, action or inaction presenting good cause for such action, or

(8) failure to make payment when due.

SUBCHAPTER 5. GENERAL OPERATIONS

252:301-5-4. On-site ~~inspections~~ evaluation

(a) ~~**Inspections**~~On-site evaluations may be unannounced.

(b) ~~**On-site requirements.**~~ During an ~~inspection~~ on-site evaluation the DEQ may require on-site analyses of proficiency test samples by laboratory personnel.

(c) ~~**Corrective action plan.**~~ Following the ~~inspection~~on-site evaluation the DEQ will provide the laboratory with a copy of the ~~inspection~~evaluation report. The laboratory will be afforded a designated time period in which to correct any listed deficiencies. The DEQ~~ may~~will require a laboratory to develop and implement a Corrective Action Plan (CAP).

(d) ~~**Out-of-state laboratories.**~~ Out-of-state laboratories already in the program may be required to have an ~~on-site inspection~~on-site evaluation performed by a DEQ approved ~~agent~~assessor. The laboratory shall be solely responsible for costs associated with the ~~inspection~~on-site evaluation, if any. The ~~inspection~~evaluation report shall be submitted to the DEQ along with ~~a~~any ~~Corrective Action Plan (~~ CAP~~)~~ if needed.

(e) The laboratory shall have an on-site evaluation prior to granting an initial accreditation.

(f) Prior to granting accreditation for an additional field of accreditation to a laboratory, DEQ may perform an on-site evaluation of the laboratory. All laboratories must pay an appropriate on-site evaluation fee for each evaluation requested by the laboratory for the additional fields of accreditation.

(g) DEQ may conduct on-site evaluation of a laboratory to ensure compliance with this Chapter approximately biennially, or upon receipt of complaint.

SUBCHAPTER 7. PROFICIENCY TESTING

252:301-7-2. Participation required

A laboratory must participate in two single-blind, single-concentration, regularly scheduled Proficiency Testing (PT) studies per calendar year for each analyte in each class of accreditation for which it seeks accreditation or renewal of accreditation. PT samples must be provided by a National Environmental Laboratory Accreditation Program (NELAP) Approved PT Provider.~~and shall conform to all applicable National Environmental Laboratory Accreditation Conference (NELAC) standards.~~

SUBCHAPTER 9. QUALITY ASSURANCE/QUALITY CONTROL

PART 3. STANDARD OPERATING PROCEDURES AND METHODS MANUAL

252:301-9-37. Methodology incorporated by reference

The following EPA methods are hereby incorporated by reference:

(1) "National Primary Drinking Water Regulations", 40 CFR Part 141, published ~~July 1, 2012~~ July 1, 2018.

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Update I, II, IIA, IIB, III, IIIA, IIIB, ~~and~~ IV and VI. See further SW-846-ON-LINE.; and

(3) "Guidelines Establishing Test Procedures for the Analysis of Pollutants 40 CFR Part 136, published ~~July 1, 2012~~ July 1, 2018.

PART 5. QA/QC PROGRAM REQUIREMENTS

252:301-9-51. QA/QC program required

Each accredited laboratory shall maintain a QA/QC program to demonstrate the precision and accuracy of analyses. The program shall be in place before accreditation is granted. For a minimum of ~~three (3)~~five (5) years, each laboratory shall maintain records of all analyte accredited analyses, including but not limited to those necessary for a QA/QC program. Laboratories shall perform individual quality control for every analyte for which the laboratory is accredited or is applying for accreditation.

252:301-9-54. Inorganic~~/classic~~ chemistry

If approved methodologies do not specify minimum laboratory QA/QC requirements for inorganic~~/classic~~ chemistry, the following frequencies shall apply:

(1) A minimum of three concentrations of standards for daily calibration plus one continuing calibration check standard after each ten samples tested. The lab should repeat all samples tested after the last acceptable continuing calibration check if the continuing calibration check standard is outside ~~"~~ plus/minus 10%.

(2) One blank per twenty samples tested (or batch).

(3) If applicable, one spike per twenty samples tested or one per batch.~~(or at least once per month, whichever is the greater frequency).~~

(4) One duplicate or spiked duplicate per twenty samples tested or one per batch.~~or at least once per month, whichever is the greater frequency.~~

252:301-9-57. Support equipment

All support equipment shall be calibrated or verified at least annually, using a recognized National Metrology Institute, such as NIST, traceable references when available, bracketing the range of use. The results of such calibration or verification shall be within the specifications required of the application for which this equipment is used or the equipment shall be removed from service and tagged as such until repaired.

[OAR Docket #19-693; filed 6-27-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 302. FIELD LABORATORY ACCREDITATION

[OAR Docket #19-694]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
252:302-1-4. Definitions [AMENDED]
252:302-1-5. Fees [AMENDED]
Subchapter 3. Field Laboratory Accreditation Process
Part 1. Application
252:302-3-4. Operational information [AMENDED]
Part 5. Grounds to Suspend or Revoke
252:302-3-31. Grounds to take enforcement action [AMENDED]
Subchapter 5. General Operations
252:302-5-2. Laboratory technician [AMENDED]
252:302-5-6. On-site ~~inspections~~evaluations [AMENDED]
Subchapter 7. Proficiency Testing
252:302-7-1. Participation required [AMENDED]
Subchapter 9. Quality Assurance/Quality Control
Part 3. Standard Operating Procedures and Methods Manual
252:302-9-25. Methodology incorporated by reference [AMENDED]
Part 5. QA/QC Program Requirements
252:302-9-32. QA/QC documentation [AMENDED]
252:302-9-33. Sample storage for pickup [AMENDED]

AUTHORITY:
Environmental Quality Board; 27A O.S. § 2-2-101; Water Quality Management Advisory Council; 27A O.S. § 2-2-201; and 27A O.S. §§ 2-4-101, 2-4-201, 2-4-301, 2-4-302 and 2-4-303.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2018

COMMENT PERIOD:
December 3, 2018 to January 2, 2019

PUBLIC HEARING:
Before the Council on January 8, 2019, and before the Environmental Quality Board on February 15, 2019

ADOPTION:
February 15, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Date of 40 CFR Part 136 provisions incorporated by reference in these rules is changed to "as published on July 1, 2018."
Incorporating rules:
OAC 252:302-9-25
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at State Environmental Laboratory Service Division, Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, 405-702-1000
GIST/ANALYSIS:
The gist of these rules and the underlying reason for this rulemaking is to make the Laboratory Accreditation Rules internally consistent, to update accreditation requirements to reflect current EPA standards for analysis, and to make program fees more closely approximate program costs for accreditation.
CONTACT PERSON:
David Caldwell, (405) 702-1000 or david.caldwell@deq.ok.gov The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

252:302-1-4. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*) and OAC 252:4 (Department of Environmental Quality Rules of Practice and Procedure), the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Acceptable results", as defined in 27A O.S. § 2-4-101, *means a result within limits determined on the basis of statistical procedures as prescribed by the Department.*

"Accreditation" means the process by which the DEQ recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory.

"Analyte" means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure and is synonymous with "parameter."

"Applicant" means the owner of a laboratory, or a representative authorized by the owner to act on the owner's behalf, seeking accreditation from the DEQ.

"Applicant laboratory" means the laboratory and its owner or authorized representative for which an application for accreditation has been filed with the DEQ.

"Approved method" means an analytical test method which has been required by law or is recognized by the DEQ as acceptable for a specific usage.

"Blind audit" means a process whereby the DEQ or any other designated agent submits proficiency testing samples to an accredited laboratory in a manner such that the laboratory is not aware of the process.

"Certificate" is defined in 27A O.S. § 2-4-101 and means the same as laboratory accreditation.

"Corrective Action Plan" or **"Corrective Action Report"** is a written plan of action, including a schedule for implementation, to correct deficiencies or findings identified in the DEQ or DEQ-approved agent's inspection report, including a timeline for implementation; or to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent its recurrence.

"Critical Finding" means a conclusion of noncompliance that would require an immediate corrective action or an immediate stop to testing.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Evaluation", as defined in 27A O.S. § 2-4-101, *means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific parameters.*

"Field laboratory" is a small laboratory which does not want to participate in The NELAC Institute accreditation standards and is limited to analysis for pH, residual chlorine (total residual chlorine, free chlorine, total oxidants or free oxidants), turbidity, conductivity, temperature and dissolved oxygen.

"Finding" means a conclusion of noncompliance of the evaluation process supported by objective evidence.

"Initial accreditation" means a first-time accreditation granted to a laboratory not previously accredited by the DEQ.

"Interim accreditation" ~~means temporary accreditation status for a laboratory that has met all accreditation criteria except for a pending on-site assessment which has been delayed for reasons beyond the control of the laboratory.~~ means an out-of-time accreditation issued to a DEQ accredited laboratory for analytes in which the laboratory is not currently accredited by the DEQ.

"Laboratory" as defined in 27A O.S. § 2-4-101, means *a facility that performs analyses to determine the chemical, physical or biological properties of air, water, solid waste, hazardous waste, wastewater or soil or subsoil materials or performs any other analyses related to environmental quality evaluations.* "Laboratory" includes mobile laboratories.

"Laboratory waste" means by-products of the analytical process, residues of samples analyzed, discarded reagents or standards and any materials contaminated by any of these.

"Owner" means the sole proprietor of an individually owned laboratory, the controlling or managing partner of a laboratory held by a partnership, the major stockholders of a corporate owned laboratory, or a municipality or other local government entity which owns or operates a laboratory.

"Parameter" is defined in 27A O.S. § 2-4-101 and is synonymous with "analyte."

"Proficiency testing (PT) sample" means a sample submitted to a laboratory by the DEQ or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using an approved method.

"Program" means the DEQ laboratory accreditation program.

"Residual chlorine" means total residual chlorine, free chlorine, total oxidants or free oxidants.

"QA Plan" or **"Quality Assurance Plan"** means a written description of quality assurance activities (quality control) that will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.

"SOP manual" or **"Standard Operating Procedure manual"** means a document approved by a laboratory director that includes approved methods, equipment and instruments used by the laboratory for analyses.

252:302-1-5. Fees

(a) **Applicable fees.** The following fees apply:

(1) Initial accreditation - $350.00

(2) Renewal accreditation - $350.00

(3) Interim accreditation - $200.00

(4) Renewal late fee - $100.00

(5) Accreditation amendment - $70.00

(6) On-site evaluation (initial) - $1,000.00

(7) On-site evaluation (renewal) - $500.00 annually

(8) On-site evaluation (interim) - $1,000.00

(b) **Annual fee adjustment.** To assist in meeting rising costs to the DEQ of the environmental services and regulatory programs associated with the laboratory services program, the fees set out in this Section shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(c) **On-site evaluation fee.** The evaluation fee is $1000 for initial or interim applications. The on-site evaluation fee will be invoiced with initial or renewal application fees.

SUBCHAPTER 3. FIELD LABORATORY ACCREDITATION PROCESS

PART 1. APPLICATION

252:302-3-4. Operational information

The application shall address the following operational issues:

(1) A listing of equipment to be used for sample analysis, storage and reporting.

(2) A description of the methods, equipment and instruments used by the applicant laboratory for specific analytes which may be in the form of an SOP manual when required.

(3) A written laboratory QA plan which includes but is not limited to:

(A) A listing of laboratory personnel, including the laboratory ~~director~~supervisor, which gives the academic training, experience and analytical and supervisory responsibilities~~of each~~; and

(B) A narrative description of the methods used for sample receipt, storage and disposal.

(4) Results of the laboratory's two most recent proficiency testing rounds, at least 15 calendar days apart from the date of analysis.

(5) A report of a laboratory ~~inspection~~ evaluation conducted by the DEQ ~~or a DEQ approved agent within the twelve (12) months prior to the date of filing or, for in-state laboratories only, a letter requesting the DEQ to conduct an on-site inspection evaluation. The inspection evaluation report~~ shall verify data submitted in ~~an~~the application, list any deficiencies and be signed by the DEQ.~~or DEQ approved agent.~~

(6) If ~~deficiencies or~~ findings are listed in an ~~inspection~~ evaluation report, the applicant shall submit a Corrective Action Report which specifies deadlines for correction~~implementation~~ and correction of the ~~plan~~finding. The DEQ may establish conditions, including compliance schedules, for the applicant's Corrective Action Report.

(7) Hours of operation.

PART 5. GROUNDS TO SUSPEND OR REVOKE

252:302-3-31. Grounds to take enforcement action

In addition to the grounds listed in 27A O.S. §2-3-501 *et seq*., § 2-4-305(A) and OAC 252:4-7-15, the DEQ may suspend, revoke or refuse to renew in part or in whole the accreditation of any laboratory for the following grounds:

(1) consistent and significant errors in analyses, erroneous reporting or evidence of professional or technical incompetence;

(2) misrepresentation to others regarding the type and conditions of DEQ accreditation and the reliance of others on such misrepresentation;

(3) failure to perform any of the following:

(A) to correct deficiencies, comply with a Corrective Action Report, or take other action required by the DEQ pursuant to these rules;

(B) to participate or produce acceptable results in required proficiency testing;

(C) to cooperate with or allow on-site laboratory evaluations, ~~inspections,~~ or access to records; or

(D) failure to notify or submit reports to the DEQ as required by this Chapter

(4) submission of a proficiency testing sample to another laboratory for analysis, and reporting data received as its own;

(5) collaboration with other laboratories on results before proficiency testing sample results are submitted to the required agency;

(6) allowing persons other than qualified laboratory employees to perform and report results of accredited analytes; or

(7) any other violation, action or inaction presenting good cause for such action.

SUBCHAPTER 5. GENERAL OPERATIONS

252:302-5-2. Laboratory technician

(a) All field laboratories shall have at least one on-site employee meeting the minimum requirements of this chapter.~~subsection (b) of this section unless un-supervised, in which case the technician must have an additional six (6) months experience performing environmental testing and must have demonstrated satisfactory participation on PT samples. Laboratory technicians under the supervision of a supervisor/consultant must only meet the minimum requirements of subsection (b) of this section.~~

(b) The laboratory technician shall have at least a high school diploma or equivalent, complete a method training program under an experienced analyst and have six months bench experience in the analysis of process samples

(c) The laboratory technician shall have knowledge of the use of analytical equipment and support equipment used for the analysis of pH, chlorine residual, turbidity, conductivity, temperature and dissolved oxygen.

(d) Before analyzing compliance samples, the laboratory technician ~~should~~must demonstrate acceptable results on at least four (4) replicates of a known standard. These are analyzed as unknown samples over a period of 3 to 5 days by the technician; or demonstrate satisfactory participation on PT samples and adhere to ~~any~~ required QC procedures specified in the methods for blanks, precision, accuracy, sensitivity, and specificity. The demonstration must be documented according to the laboratory's QA plan.

(e) Laboratory technicians must be under the supervision of a supervisor/consultant until the minimum requirements of this subsection are met.

252:302-5-6. On-site ~~inspections~~evaluations

(a) ~~**Inspections.**~~ ~~Inspections~~An on-site evaluation may be unannounced.

(b) ~~**On-site requirements.**~~ During an ~~inspection~~evaluation the DEQ may require on-site analyses of proficiency test samples by laboratory personnel.

(c) ~~**Corrective Action Report.**~~ Following the ~~inspection~~evaluation the DEQ will provide the laboratory with a copy of the ~~inspection~~evaluation report within 45 days of ~~inspection~~the on-site evaluation.~~.~~ The laboratory will be afforded 30 days from receipt of report in which to correct any listed deficiencies. The DEQ may require a laboratory to develop and implement a Corrective Action Report (CAR). The DEQ will provide an evaluation of the CAR within 45 days of receipt of same.

(d) Prior to granting initial accreditation to a laboratory, DEQ will perform an on-site evaluation of the laboratory.

(e) Prior to granting a laboratory an accreditation for an additional analyte, DEQ may perform an on-site evaluation of the laboratory.

(f) DEQ may conduct routine on-site evaluation of a laboratory every other year to ensure compliance with the conditions of this Chapter, or upon receipt of complaint.

SUBCHAPTER 7. PROFICIENCY TESTING

252:302-7-1. Participation required

A field laboratory must participate in two single-blind, single-concentration, regularly scheduled Proficiency Testing (PT) studies per calendar year for each analyte in each class of accreditation for which it seeks accreditation or renewal of accreditation. PT samples must be provided by a National Environmental Laboratory Accreditation Program (NELAP) approved PT provider.

SUBCHAPTER 9. QUALITY ASSURANCE/QUALITY CONTROL

PART 3. STANDARD OPERATING PROCEDURES AND METHODS MANUAL

252:302-9-25. Methodology incorporated by reference

"Guidelines Establishing Test Procedures for the Analysis of Pollutants" 40 CFR Part 136, as published on ~~July 1, 2012~~

July 1, 2018, ~~at 40 CFR Part 136~~ is hereby incorporated by reference.

PART 5. QA/QC PROGRAM REQUIREMENTS

252:302-9-32. QA/QC documentation

(a) Documentation shall be kept to ~~insure~~ ensure quality control has been maintained and that proper methodologies have been used for the preparation and analysis of samples. All documentation shall be maintained and be readily available for reference or inspection.

(b) The following QC documentation shall be maintained in each laboratory.

(1) **Bench records.** Data associated with analysis, date, time, analyst, method, amounts, calculations, sample matrix, sample identification.

(2) **Calibration data.**

(A) Each instrument shall have documented calibration on each day of use.

(B) Each calibration shall be verified with a quality control standard that is of a source separate from the calibration source.

(C) Each aliquot of a solution used for calibration and quality control shall be used only once.

(D) Calibration shall be documented either by the instrument printout or by calculations which show the curve or coefficient of the linear equation or slope.

(E) Automated on-line equipment shall be calibrated according to manufacturer's instructions.

(3) **Maintenance logs.** By instrument, dates and description ~~data.~~of repairs, preventive maintenance, malfunctions, and other actions or events affecting instrument performance

(4) **QC charts.** Quality control procedures for monitoring the validity of each environmental test must be in place. The resulting data shall be recorded in such a way that trends are detectable. Data recorded shall consist of blanks, quality control standards and duplicates

(5) **Sample login.** Sample login, including unique sample identification, date, time, source of sample (including name, location and sample matrix), preservative used, analysis required, name of collector and any pertinent field.

252:302-9-33. Sample storage for pickup

Each day of use, laboratories shall record refrigerator temperature readings and any temperature excursions with corrective action in a logbook. Any thermometer used shall be calibrated or verified at least annually, using a recognized National Metrology Institute such as NIST, traceable references when available, bracketing the range of use.

[OAR Docket #19-694; filed 6-27-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 307. TNI LABORATORY ACCREDITATION

[OAR Docket #19-695]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Introduction
252:307-1-3. Definitions [AMENDED]
252:307-1-4. Incorporation by reference [AMENDED]
252:307-1-5. Accreditation classes ~~and fields of accreditation~~ [AMENDED]
252:307-1-7. Annual fees [AMENDED]
Subchapter 9. Management and Technical Requirements
Part 1. Proficiency Testing
252:307-9-8. Failure to perform PT [AMENDED]

AUTHORITY:
Environmental Quality Board; 27A O.S. § 2-2-101; Water Quality Management Advisory Council; 27A O.S. § 2-2-201; and 27A O.S. §§ 2-4-101, 2-4-201, 2-4-301, 2-4-302 and 2-4-303.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2018

COMMENT PERIOD:
December 3, 2018 to January 2, 2019

PUBLIC HEARING:
Before the Council on January 8, 2019, and before the Environmental Quality Board on February 15, 2019

ADOPTION:
February 15, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 15, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:
Date of 40 CFR Part 136 provisions incorporated by reference in these rules is changed to "as published on July 1, 2018."

Incorporating rules:
252:307-1-4

Availability:
The standards are on file at the State Environmental Laboratory Service Division, Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102 and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. to 4:30 p.m., excluding state holidays. 405-702-1000

GIST/ANALYSIS:
The gist of this rule and the underlying reason for the rulemaking is to make the Laboratory Accreditation Rules internally consistent, to update accreditation requirements to reflect current EPA standards for analysis, and to make program fees more accurately reflect the Department's full cost for performing laboratory accreditation and reduce reliance on State appropriated funds. By vote of the WQMAC at the council meeting on January 8, 2019, language was added to cap the fees in 252:307-1-7 (b) not to exceed $10,000 per individual laboratory, to the onsite evaluation fee.

CONTACT PERSON:
David Caldwell, (405) 702-1000 or david.caldwell@deq.ok.gov. The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 1. INTRODUCTION

252:307-1-3. Definitions

In addition to the definitions contained in Title 27A of the Oklahoma Statutes, OAC 252:4 (Department of Environmental Quality Rules of Practice and Procedure) and the TNI Standard, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise. Any technical term not defined shall be defined by its generally accepted scientific meaning or its standard dictionary meaning.

"Acceptable results", as defined in 27A O.S. § 2-4-101, *means a result within limits determined on the basis of statistical procedures as prescribed by DEQ.*

"Accreditation" or **"accredited"** means the process by which the DEQ evaluates an environmental laboratory's quality systems, staff, facilities, equipment, test methods, records and reports against the requirements of this Chapter. Laboratories determined to meet the qualifications and standards of this Chapter are thereby accredited. The term certification, as used in 27A O.S. §2-4-101, is synonymous with the term accreditation.

"Accreditation Body" means a governmental agency that holds a current Certificate of Recognition from TNI to administer a laboratory accreditation program.

"Analyte" means the component, compound, element or isotope to be identified or quantified using a test or analysis.

"Applicant" means the owner of a laboratory, or a representative authorized by the owner to act on the owner's behalf, seeking accreditation from the DEQ.

"Applicant laboratory" means the laboratory and its owner or authorized representative for which an application for accreditation has been filed with the DEQ.

"Approved method" means an analytical test method which has been required by law or is recognized by the DEQ as acceptable for a specific usage.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of a laboratory to the standards and requirements of this Chapter. The term "Evaluation" as used in 27A O.S. § 2-4-101, is synonymous with the term "Assessment".

"Basic environmental laboratory" means a laboratory that is limited to the following analytes: five day biochemical oxygen demand, carbonaceous biochemical oxygen demand, chemical oxygen demand, total organic carbon (TOC), total Kjeldahl nitrogen (TKN), nitrate-nitrite nitrogen, organic nitrogen, ammonia nitrogen, total dissolved solids (filterable residue), total suspended solids (non-filterable residue), volatile residue, total phosphorous, orthophosphate phosphorus (reactive phosphorus), chloride, fluoride, oil and grease, sulfate, pH, specific conductance, dissolved oxygen, turbidity, total residual chlorine, hardness, alkalinity, color, fecal coliform, Escherichia coli, total coliform, cyanide, phenolics, copper, zinc, iron, sulfide, chromium, and hexavalent chromium.

"Blind audit" means a process whereby the DEQ or any other designated agent submits proficiency testing samples to an accredited laboratory in a manner such that the laboratory is not aware of the process.

"Category" means a set of Fields of Accreditation subject to a single fee.

"Certificate" or **"Certificate of Accreditation"** is a document issued by DEQ acknowledging that an environmental laboratory has met standards for accreditation, and identifying those Fields of Accreditation for which the laboratory is accredited.

"Critical nonconformity" or **"critical finding"** means a conclusion of noncompliance that would require an immediate corrective action or an immediate stop to testing.

"Corrective Action Plan" or **"Corrective Action Report"** is a written plan of action, including a schedule for implementation, to correct deficiencies or findings identified in the DEQ or DEQ-approved agent's assessment report, including a time line for implementation; or to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent its recurrence.

"DEQ" means the Oklahoma Department of Environmental Quality. For purposes of certifications issued and enforcement matters arising prior to July 1, 1993, "DEQ" also means predecessor agencies of the DEQ which had jurisdiction over environmental water quality laboratories on June 30, 1993.

"Field of Accreditation (FoA)" means those category, matrix, technology/method, and analyte combinations for which DEQ offers accreditation.

"Finding" means a conclusion of noncompliance or nonconformity of the evaluation process, referenced to the TNI Standard and supported by objective evidence.

"Initial accreditation" means a first-time accreditation granted to a laboratory not previously accredited by the DEQ.

"Interim accreditation" means an out-of-time ~~temporary~~filing for an accreditation status issued to a DEQ accredited laboratory for a ~~Fields~~ Field of Accreditation or a category not currently accredited by the DEQ, or where appropriate, temporary accreditation status for a laboratory that has met all accreditation criteria except for a pending on-site assessment which has been delayed for reasons beyond the control of the laboratory.

"Laboratory", as defined in 27A O.S. § 2-4-101, *means a facility that performs analyses to determine the chemical, physical or biological properties of air, water, solid waste, hazardous waste, wastewater or soil or subsoil materials or performs any other analyses related to environmental quality evaluations.* "Laboratory" includes mobile laboratories.

"Laboratory waste" means by-products of the analytical process, residues of samples analyzed, discarded reagents or standards and any materials contaminated by any of these.

"Matrix" means the substrate of a test sample, e.g., drinking water, wastewater, other aqueous, or solid.

"Mobile laboratory" means a mobile facility that performs analyses in a self-contained environment with professional analytical instrumentation, excluding field testing of those analytes that require immediate measurement on site (conductivity, residual chlorine, pH, dissolved oxygen, temperature).

"Nonconformity" means a conclusion of noncompliance of the evaluation process, referenced to the TNI Standard and supported by objective evidence. Also may be considered a Finding.

"Owner" means the sole proprietor of an individually owned laboratory, the controlling or managing partner of a laboratory held by a partnership, the major stockholders of a corporate owned laboratory, or a municipality or other local government entity which owns or operates a laboratory.

"Parameter" is synonymous with "analyte".

"Primary accreditation" is authorization issued to ~~a~~an Oklahoma laboratory following an assessment of the laboratory's total quality system, on-site assessment, and proficiency testing for fields of accreditation.

"Primary accreditation body" (Primary AB) means the accreditation body responsible for assessing a laboratory's total quality system, on-site assessment, and proficiency testing (PT) performance tracking for fields of accreditation.

"Proficiency testing (PT) sample" means a sample submitted to a laboratory by the DEQ or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using an approved method.

"Program" means the DEQ laboratory accreditation program.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of the laboratory to ensure the quality of its product and the utility of its product to its users. The Quality Manual will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.

"Quality system" means a structured and documented management system describing the policies, objective, principles, organizational authority, responsibilities, accountability, and implementation plan of a laboratory for ensuring quality in its work processes, products and services. The quality system provides the framework for planning, implementing, and assessing work performed by the laboratory and for carrying out required quality assurance and quality control activities.

"Secondary accreditation" is authorization issued to a laboratory based on recognition and review of an existing primary accreditation for the same fields of accreditation.

"Secondary accreditation body" (Secondary AB) means an accreditation body that grants laboratory accreditation for a field of accreditation based on recognition of accreditation from a Primary Accreditation Body for the same fields of accreditation.

"Standard operating procedures" (SOPs) means a written document approved by a laboratory director that details the method for an operation, analysis, or action, with thoroughly prescribed techniques and steps. SOPs include the methods for performing certain routine or repetitive tasks.

"Synthetic organic chemicals" (SOCs) are man-made organic chemicals that are less volatile than volatile organic compounds. SOCs are used as pesticides, defoliants, fuel additives and as ingredients for other organic compounds.

"The NELAC Institute" (TNI) means an organization of federal and state agencies whose purpose is to foster the generation of environmental data of known and documented quality through an open, inclusive, and transparent process that is responsive to the needs of the environmental laboratory community. The TNI Consensus Standards Development Program (CSDP) establishes compliance standards that reflect the best professional practices in the environmental laboratory industry. The TNI National Environmental Laboratories Accreditation Program (NELAP) implements TNI's consensus standards through state agencies recognized by TNI as Accreditation Bodies. DEQ is the TNI Accreditation Body in the State of Oklahoma.

"TNI Standard" means the performance standard for analytical testing of environmental samples and the laboratory accreditation process adopted by TNI, current to the date incorporated by reference in this Chapter.

252:307-1-4. Incorporation by reference

(a) **TNI Standard.** Except as provided in subsection (c), Laboratories accredited under this Chapter shall meet the requirements of the TNI Standard for the Environmental Laboratory Sector, Volume 1, "Management and Technical Requirements for Laboratories Performing Environmental Analysis." Modules 1,_2,_3,_4,_5,_6 and 7 as adopted September 8, 2009~~.~~, which are hereby incorporated by reference.

(b) **EPA methodology.** Environmental analysis for compliance with the Federal Safe Drinking Water Act, Federal Clean Water Act and Federal Resource Conservation and Recovery Act ~~require~~requires conformance with applicable EPA approved methodology. If EPA has approved a test procedure for analysis of a specific analyte, the laboratory must use an approved test procedure. The following EPA methods~~, as published in July 2014,~~ are hereby incorporated by reference:

(1) "Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR Part 136, published July 1, 2018;

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA, IVB ~~and~~ V and VI. See further SW-846-ON-LINE;

(3) "Methodologies set forth in the National Primary Drinking Water Regulations," 40 CFR Part 141~~; and~~ published July 1, 2018; and

(4) "Manual for the Certification of Laboratories Analyzing Drinking Water," Fifth Edition and Supplement 1 (EPA 815-5-05-004, January 2005 and EPA 815-F-08-006, June 2008).

(c) **Excluded provisions.** In Volume 1, Module 1 of the TNI Standard, subsections 4.1.3 and 4.2.1a) are not incorporated by reference.

(d) **DEQ approved methodologies.** The following methods are specifically approved by the DEQ:

(1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC6 to nC35) of June 1, 2001;

(2) Oklahoma GRO 8020/8015(Modified) of February 24, 1996;

(3) Oklahoma DRO 8000/8100(Modified) of October 22, 1997;

(4) ASTM mussels of 2006;

(5) ASTM E 1193-97 for whole effluent toxicity tests; and

(6) On a case by case basis as approved by DEQ.

(e) **Inconsistencies between test methods and rules.** In the event there are inconsistencies between the requirements of this Chapter and requirements of those provisions incorporated by reference, the laboratory must meet all applicable requirements. Laboratories are encouraged to consult with DEQ when in doubt about the proper or applicable test method.

252:307-1-5. Accreditation classes ~~and fields of accreditation~~

(a) **Classes.** Laboratories may be accredited in Drinking Water and/or ~~as a~~ General Environmental Laboratory.

(b) **Drinking water laboratory.** A drinking water laboratory may be accredited for Fields of Accreditation in the following categories: metals, general chemistry, microbiology, asbestos, synthetic organic chemicals (SOCs), volatile organic compounds (VOCs) and/or radionuclides.

(c) **General environmental laboratory.** A laboratory may be accredited for Fields of Accreditation in the following categories: metals, nutrients, oxygen demands, semi-volatile organic compounds (SVOCs), general chemistry I and/or II, microbiology, asbestos, synthetic organic chemicals (SOCs), volatile organic compounds (VOCs), radionuclides, whole effluent toxicity (WET) testing, hazardous waste characterization, petroleum hydrocarbons, perchlorate, and/or basic environmental laboratory

252:307-1-7. Annual fees

(a) **Applicable fees.** The following fees apply:

(1) Initial accreditation $1,183.00

(2) Interim accreditation 696.00

(3) Renewal fee 35.31

(4) Renewal late fee 347.86

(5) Accreditation amendment 69.57

(6) Fee for 1 category 488.05

(7) Fee for 2 categories 976.09

(8) Fee for 3 categories 1,464.14

(9) Fee for 4 categories 1,952.18

(10) Fee for 5 or more categories 2,440.23

(11) Onsite Assessment Fee Reimbursable Expenses

(b) **Calculation of fees.** In addition to the application fee required for initial, renewal and interim accreditation, a laboratory must submit the applicable category fee. Fees for accreditation amendment, as described in OAC 252:307-5-2, consist of the accreditation amendment fee. The onsite assessment fee shall be calculated at actual cost, not to exceed $10,000 per individual laboratory, and includes but is not limited to the following: assessor(s) time and labor (preliminary document review, total travel, time-on-site, report preparation, and corrective action review), transportation, per diem (if required), as described in 252:307-7-1. The onsite assessment will be invoiced at the closing of the assessment.

(c) **Annual fee adjustment.** To assist in meeting rising costs to the DEQ of the environmental services and regulatory programs associated with the laboratory services program, the fees set out in this Section shall be automatically adjusted on July 1 every year after 2008 to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments. Current laboratory accreditation fees are available on the DEQ website.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(d) **Onsite assessment fee.** All laboratories must pay an onsite assessment fee for each assessment to continue accreditation or as a result of just cause according to this chapter.

SUBCHAPTER 9. MANAGEMENT AND TECHNICAL REQUIREMENTS

PART 1. PROFICIENCY TESTING

252:307-9-8. Failure to perform PT

~~The DEQ shall not renew accreditation for a failed or omitted FoA or category for a laboratory which does not meet~~

~~the requirements of this subchapter.~~A laboratory's accreditation for a field of proficiency testing will be suspended when a laboratory fails to comply with Subchapter 9 Section 3: failing to maintain a history of at least two acceptable PT studies out of the most recent three. The suspension will be temporary lasting no more than six months or when the accreditation expires whichever is less. The laboratory must notify the Laboratory Accreditation Program of its intent to regain accreditation through submission of a corrective action plan. Once accreditation for a ~~FOA~~field of proficiency testing~~or category~~ has been lost, the procedures for initial or interim accreditation shall apply.

[OAR Docket #19-695; filed 6-27-19]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS

[OAR Docket #19-690]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:606-1-3 [AMENDED]
252:606-1-4 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. § 2-2-101; Water Quality Management Advisory Council; 27A O.S. § 2-2-201; and 27A O.S. §§ 2-6-103, 2-6-303 and 2-6-306.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
July 25, 2017
COMMENT PERIOD:
August 15, 2018 to September 15, 2018
PUBLIC HEARING:
Before the Council on September 25, 2018, and before the Environmental Quality Board on November 9, 2018
ADOPTION:
November 9, 2018
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 19, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2018."
Incorporating rules:
OAC 252:606-1-3
OAC 252:606-1-4
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

GIST/ANALYSIS:
The gist of this proposed rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department's delegation agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2016, to July 1, 2018. The most significant federal regulation updates being incorporated include a rule that modifies the approved testing requirements for analysis and sampling under the Clean Water Act (the Methods Update Rule); and an updated rule that establishes two alternative procedural approaches a permitting authority can use to issue NPDES general permits for small MS4s in order to ensure that the discharge of pollutants is reduced to the "maximum extent practicable." This also included slight changes in the names of 40 CFR Parts 122.33-35.
CONTACT PERSON:
Mark Hildebrand, (405) 702-8100 or Mark.Hildebrand@deq.ok.gov (Procedural, legal and technical questions). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 1. INTRODUCTION

252:606-1-3. Adoption of U.S. EPA regulations by reference

(a) **Interpretation of rules.** Narrative provisions of this Chapter apply control over any provision of regulations of the Environmental Protection Agency (EPA) which are adopted by reference. The rules set forth in this Chapter are interpreted consistently with state compliance with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

(b) **Federal regulations adopted.** The following provisions of Title 40 of the Code of Federal Regulations (CFR) and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety:

(1) Part 116 (Hazardous Substances List) (except § 116.3 (*Navigable Waters*)(4))

(2) Part 117 (Reportable Quantities for Hazardous Substances) (except § 117.1 (*Navigable Waters*)(4))

(3) The following from PART 122 (NPDES PERMIT REGULATIONS):

(A) 122.1(b) - (scope of NPDES permit requirements)

(B) 122.2 - (definitions) (except (*Waters of the United States*)(4))

(C) 122.3 - (exclusions)

(D) 122.4 - (prohibitions)

(E) 122.5 - (effect of permit)

(F) 122.6 - (continuation of expiring permits)

(G) 122.7(b) and (c) - (confidential information)

(H) 122.21 - (application for a permit)

(I) 122.22 - (signatories)

(J) 122.24 - (concentrated aquatic animal production facilities)
(K) 122.25 - (aquaculture projects)
(L) 122.26 - (stormwater discharges)
(M) 122.27 - (silviculture)
(N) 122.28(a) and (b) - (general permits)
(O) 122.29 - (new sources and new dischargers)
(P) 122.30 - What are the objectives of the storm water regulations for small MS4s?
(Q) 122.31 - As a tribe, what is my role under the NPDES storm water program?
(R) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
(S) 122.33 - ~~If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?~~ Requirements for obtaining permit coverage for regulated small MS4s.
(T) 122.34 - ~~As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?~~Permit requirements for regulated small MS4 permits.
(U) 122.35 - ~~As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?~~May the operator of a regulated small MS4 share the responsibility to implement the minimum control measures with other entities?
(V) 122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?
(W) 122.41 - (permit conditions)
(X) 122.42 - conditions for specified categories of permits)
(Y) 122.43 - establishing permit conditions)
(Z) 122.44 - (establishing permit limitations, standards and other conditions)
(AA) 122.45 - (calculating permit conditions)
(BB) 122.46 - (permit duration)
(CC) 122.47(a) - (schedules of compliance)
(DD) 122.48 - (monitoring requirements)
(EE) 122.50 - (disposal into wells)
(FF) 122.61 - (permit transfer)
(GG) 122.62 - (permit modification)
(HH) 122.63 - (minor modifications of permits)
(II) 122.64 - (permit termination)
(JJ) Appendices A through I

(4) The following from PART 124 (Procedures for Decision making):
(A) 124.1 - (introduction)
(B) 124.2 - (definitions)
(C) 124.3(a), (c), and (d) - (application for a permit)
(D) 124.5(a), (c), (d) and (f) - (modification of permits)
(E) 124.6(a), (c), (d) and (e) - (draft permit)
(F) 124.7 - (statement of basis of conditions where no fact sheet is adopted)
(G) 124.8 - (fact sheet)
(H) 124.10(a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (b), (c), (d), and (e) - (public notice)
(I) 124.11 - (public comments and requests for hearings)
(J) 124.12(a) and (c) - (public hearings)
(K) 124.13 - (obligation of protestors, etc., to raise all issues)
(L) 124.14 - (reopening)
(M) 124.15 - (issuance & effective dates of permits)
(N) 124.17(a) and (c) - (response to comments)
(O) 124.51(a) and (b) - (specific permitting procedures-purpose and scope)
(P) 124.52 - (permits required on a case-by-case basis)
(Q) 124.56 - (fact sheets)
(R) 124.57(a) - (public notice)
(S) 124.59 - (comments from government agencies)
(T) 124.62 - (decision on variances)
(U) 124.66 - (thermal variance procedures)

(5) The following from PART 125 (criteria and standards for NPDES):
(A) Subpart A (technology-based treatment),
(B) B (criteria for aquaculture projects),
(C) D (fundamentally different factors),
(D) H (alternative effluent limitations),
(E) I (new cooling water intakes), and
(F) J (existing cooling water intakes).

(6) 40 CFR Part 129 (Toxic Pollutant Effluent Standards)
(7) 40 CFR Part 136 (testing and laboratory)
(8) 40 CFR §§ 401-471 (Effluent Guidelines and Standards) (except § 401.11 (*Navigable Waters*)(4))
(9) 40 CFR § 110.6 (notice of oil discharge) and
(10) 40 CFR Part 302 (Reportable Quantities and Notification) (except § 302.3 (*Navigable Waters*)(4))

(c) **The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter:**

(1) The following Sections from Part 503, Subpart A (General Provisions):
(A) 503.1 (Purpose and applicability)
(B) 503.2 (Compliance period)
(C) 503.3 (Permits and direct enforceability)
(D) 503.4 (Relationship to other regulations)
(E) 503.5 (Additional or more stringent requirements)
(F) 503.6(a)-(e), (g)-(j) (Exclusions)
(G) 503.7 (Requirement for a person who prepares biosolids)
(H) 503.8 (Sampling and analysis)
(I) 503.9 (General definitions)

(2) The following Sections from Part 503, Subpart B (Land Application):
(A) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(B) 503.11 (Special definitions)
(C) 503.12 (General requirements)

(D) 503.13 (Pollutant limits)
(E) 503.14 (Management practices)
(F) 503.15 (Operational standards - pathogens and vector attraction reduction)
(G) 503.16(a) (Frequency of monitoring)
(H) 503.17(a) (Recordkeeping)
(I) 503.18 (Reporting)

(3) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
(A) 503.30 (Scope)
(B) 503.31 (Special definitions)
(C) 503.32(a), (b) (Pathogens)
(D) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(4) The following Sections from Part 503 Subpart E (Incineration):
(A) 503.40 (Applicability)
(B) 503.41 (Special definitions)
(C) 503.42 (General requirements)
(D) 503.43 (Pollutant (Metal) limits)
(E) 503.44 (Operational standard - total hydrocarbons)
(F) 503.45 (Management practices)
(G) 503.46 (Frequency of monitoring)
(H) 503.47 (Recordkeeping)
(I) 503.48 (Reporting)

(5) The following Appendices from Part 503:
(A) Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)
(B) Appendix B (Pathogen treatment processes)

(d) **Exclusions.** Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2016~~2018.

[OAR Docket #19-690; filed 6-27-19]

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

[OAR Docket #19-696]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:653-1-5. Definitions [AMENDED]
252:653-1-12. Fees [NEW]
Subchapter 5. ~~ASR~~ Aquifer Storage and Recovery Treatment Plant Construction
252:653-5-1.1. Notification [NEW]
Subchapter 7. ~~ASR~~Aquifer Storage and Recovery Water Delivery Construction
252:653-7-5.1. Notification [NEW]
252:653-7-7. Aquifer testing [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 1-3-101(B)(4), 1-1-202(C)(4), 1-3-101(B)(7), 2-6-701, 2-6-110, and 2-6-310.1; Water Quality Management Advisory Council; 27A O.S. § 2-2-201.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2018
COMMENT PERIOD:
December 3, 2018 through January 8, 2019
PUBLIC HEARING:
January 8, 2019
February 15, 2019
ADOPTION:
February 15, 2019
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND LEGISLATURE:
February 22, 2018
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE DATE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The gist of the proposed rulemaking is that the Department is updating the Aquifer Storage and Recovery rules. These updates include changes for clarity, reinserting the fee provision that was removed from the original proposed rules prior to submittal to the legislature, and to provide notification provisions.
CONTACT PERSON:
Hillary Young, Land Protection Division, Chief Engineer, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at Hillary.Young@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

252:653-1-5. Definitions

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

"Activity" means the construction or operation of an ASR treatment plant, or the construction and operation of an ASR recharge well, infiltration basin or any other water delivery mechanisms, including all ASR-related activities under this Chapter.

"Applicant" means any person who submits a permit application for ASR activities under this Chapter.

"Aquifer" for the purposes of this Chapter, means a subsurface water-bearing zone limited in extent by the area of hydrologic effect associated with the ASR project.

"Aquifer Storage and Recovery" ("ASR") means delivery of water into an aquifer for later recovery and use. For purposes of this Chapter, ASR activities shall not include

groundwater recharge or augmentation through a natural connection with a farm pond or other impoundment otherwise authorized by law. ASR activities shall not include groundwater recharge or augmentation from nonpoint source runoff or stormwater discharge under the jurisdiction of the Oklahoma Department of Agriculture Food and Forestry pursuant to 2 O.S. §§ 2A-1 *et seq.* For purposes of this Chapter, ASR activities shall not include activities specifically authorized pursuant to 82 O.S. § 1020.2(G) or stormwater runoff management practices otherwise authorized by law. ASR does not constitute water reuse.

"ASR Project" means a project regulated under this Chapter; including ASR construction and operation activities.

"Area of Hydrologic Effect" means the ~~area~~areal extent of all hydrologic features, including surface and groundwater, determined by the projected extent of the underground stored water as calculated by using site-specific hydrogeologic information, and as influenced by the specific design and anticipated operation of the ASR project.

"Drinking Water Treatment Residuals" means wastewater (e.g. membrane filter reject water) from drinking water treatment processes.

"Infiltration Basin" means a shallow structure that is used to infiltrate water through permeable soils into an aquifer for ASR projects.

"Limited-Scale ASR Pilot Projects" means ASR pilot projects authorized by 27A O.S. § 2-6-110.

"Monitor Well" means any well used for the sampling or measurement with field instrumentation of any chemical or physical property related to ASR activities.

"Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, local governmental entity, or agency that seeks to conduct ASR activities under this Chapter.

"Raw Water" means untreated water from any source used in an ASR project.

"RWACP" means Raw Water and Aquifer Characterization Plan required by Subchapter 3 of this Chapter.

"Stored Water" means water in the aquifer that has been delivered pursuant to an ASR project.

"Treated Water" means raw water that has undergone treatment within a water treatment plant meeting the requirements of this Chapter.

252:653-1-12. Fees

(a) **Permit application fees.** The permit application fee for each ASR permit is as follows:

(1) ASR Treatment Plant Construction Permit - $3,000

(2) ASR Water Delivery Construction Permit - $10,000

(3) ASR Operations Permit - $10,000

(b) **Annual operating fee.** The annual operating fee for an ASR facility, permitted under Subchapter 9 of this Chapter, is $5,000 per year due on the anniversary of permit issuance.

SUBCHAPTER 5. ~~ASR~~AQUIFER STORAGE AND RECOVERY TREATMENT PLANT CONSTRUCTION

252:653-5-1.1. Notification

The applicant shall provide notice of the application by certified mail (return receipt requested) to all landowners of the properties that border the proposed ASR treatment facility boundary. The notice shall be approved by DEQ and include the information required by OAC 252:4-7-13(c).

SUBCHAPTER 7. ~~ASR~~ AQUIFER STORAGE AND RECOVERY WATER DELIVERY CONSTRUCTION

252:653-7-5.1. Notification

(a) The applicant shall provide notice of the application to the following:

(1) by certified mail (return receipt requested) to all landowners of the properties that border the proposed ASR water delivery and recovery surface structure boundaries;

(2) by certified mail (return receipt requested) to irrigation, industrial, commercial and public water supply permit holders in the area of hydrologic effect;

(3) water rights owners in the area of hydrologic effect, as directed by DEQ;

(4) ground water associations, as directed by DEQ; and

(5) associations that represent oil and natural gas operators, as directed by DEQ.

(b) The notice shall be approved by DEQ and include the information required by OAC 252:4-7-13(c).

252:653-7-7. Aquifer testing

In addition to the requirements of OAC 252:653-7-2, a plan shall be submitted to DEQ with appropriate bench-scale testing followed by field-scale pilot testing and modeling for evaluating ~~, through appropriate testing and modeling,~~ the compatibility of the delivered water with the receiving aquifer water for possible subsequent changes in aquifer characteristics, groundwater, or stored water due to hydrogeologic or hydrogeochemical changes ~~shall be submitted to DEQ~~. The plan shall include provisions for testing to determine if the proposed full-scale, long-term project is hydrologically feasible and to collect and evaluate operational, hydrologic, and geologic data, including dissolution rates, needed to support operational application for a full scale project.

[OAR Docket #19-696; filed 6-27-19]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 25. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #19-648]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Salary and Payroll

Part 1. Salary and Rate of Pay
260:25-7-11 [AMENDED]
260:25-7-12 [AMENDED]
Subchapter 9. Recruitment and Selection
Part 1. General Provisions
260:25-9-9 [AMENDED]
Subchapter 11. Employee Actions
Part 3. Probationary Employees
260:25-11-31 [AMENDED]
260:25-11-36 [AMENDED]
Part 5. Promotions
260:25-11-55 [AMENDED]
Part 11. Other Transactions
260:25-11-110 [AMENDED]
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
260:25-15-52 [AMENDED]
Subchapter 17. Performance Evaluation and Career Enhancement Programs
Part 9. Mandatory Supervisory Training
260:25-17-91 [AMENDED]
Part 11. Certified Public Manager Program
260:25-17-110 [AMENDED]
260:25-17-111 [AMENDED]
260:25-17-112 [AMENDED]
260:25-17-113 [AMENDED]
260:25-17-114 [AMENDED]
260:25-17-115 [AMENDED]
Part 13. Personnel Professionals Training and Certification
260:25-17-130 [AMENDED]
260:25-17-132 [AMENDED]
260:25-17-138 [AMENDED]

AUTHORITY:

Office of Management and Enterprise Services Human Capital Management Division; 74 O.S. Section 840-1.6A; 74 O.S. Section 840-2.23; 74 O.S. Section 840-3.1; 74 O.S. Section 840-3.15; 74 O.S. Section 840-4.11; 74 O.S. Section 840- 4.13; 62 O.S. Section 34.6(8); The Director of the Office of Management and Enterprise Services.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 21, 2018

COMMENT PERIOD:

December 17, 2018 through January 23, 2019

PUBLIC HEARING:

January 23, 2019

ADOPTION:

March 7, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 8, 2019

LEGISLATIVE APPROVAL

Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:

May 28, 2019

EFFECTIVE:

September 13, 2019

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
260:25-15-52 [AMENDED]

Gubernatorial approval:

January 2, 2019

Register publication:

36 Ok Reg 221

Docket number:

19-29

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

260:25-7-11 corrects the statutory reference from 74 O.S. § 840-1.6A(11) to 74 O.S. § 840-1.6A(10). The statutory citation was amended by Laws 2012, HB 3053 which was effective November 1, 2012.

260:25-7-12 provides clarification regarding when overtime or compensatory time may accrue and provides state agencies with authority to not count hours where paid or unpaid leave was used towards overtime hours worked.

260:25-9-9 provides clear authority for the Administrator to remove a person's name from all registers. While the historical practice has been for the Administrator to remove a person's name from all registers, the rule did not explicitly state such.

260:25-11-31 removes the reference to 260:25-11-34 which is a rule that has been revoked.

260:25-11-36 changes the number of days a probationary employee must be absent from thirty (30) continuous calendar to thirty (30) non-continuous working days in order for the probationary period to be adjusted. This change allows agencies greater flexibility in adjusting the probationary period for employees who have many intermittent absences of shorter duration.

260:25-11-55 changes the number of days an employee on a trial period must be absent from thirty (30) continuous calendar days to thirty (30) non-continuous working days and allows the trial period to be extended at the discretion of the Appointing Authority. This change allows agencies greater flexibility in adjusting the trial period for employees who have many intermittent absences of shorter duration and permits, rather than mandates, agencies to adjust the trial period if doing so would meet their business needs.

260:25-11-110 provides clarity that detail to special duty is not required for both the following scenarios: (1) when an employee is temporarily assigned to duties of another job for a period of less than (sixty) 60 days in any (twelve) 12-month period; or (2) when an employee is temporarily performing such duties as part of a return to work program so long as the temporary placement does not exceed six (6) months.

260:25-15-52 provide the regulatory framework for the shared leave program available to state employees. The Shared Leave Program was amended by changes to 74 O.S. § 840-2.23 which became effective November 1, 2018. These rules prescribe the eligibility verification process and the shared leave liaison authority and obligations. The rules also provide the regulations regarding the administration of the Leave of Last Resort Bank.

260:25-17-91 adds the definition of one (1) hour of training with broadened platforms to obtain the training to meet the modern needs to state employees; adds the definition of online learning format to address the availability of learning content via online technology; amends the definition of twelve (12) hours of training from two (2) training days of at least six (6) hours of instruction a day to twelve (12) hours of learner interaction with no more than six (6) hours spent on online learning formats; and amends the definition of twenty-four (24) hours of training from four (4) days of training that include at least six (6) hours of instruction a day to twenty-four (24) hours of learner interaction with no more than twelve (12) hours spent on online learning formats.

260:25-17-110 corrects the statutory reference from 74 O.S. § 840-1.6A(10) to 74 O.S. § 840-1.6A(9). The statutory citation was amended by Laws 2012, HB 3053 which was effective November 1, 2012.

260:25-17-111 adds the definition of training section and defines it as a group of participants who complete the program in the same period of time.

260:25-17-112 prescribes that the nomination process and criteria shall be determined by each agency; requires the agency to nominate an employee for participation in the program during designated enrollment periods and within set deadlines; and prescribes that Administrator enroll employees in the first available training section.

260:25-17-113 removes the classification of participants at active or inactive; changes the graduation requirements; and changes the process of removing a candidate from the program.

260:25-17-114 adds the requirement that each agency review and approve employee absences for scheduled cohort dates and allow managers to participate in the employee's involvement in the program.

260:25-17-115 corrects the statutory reference from 74 O.S. § 840-1.6A(10) to 74 O.S. § 840-1.6A(9). The statutory citation was amended by Laws 2012, HB 3053 which was effective November 1, 2012.

260:25-17-130 corrects the statutory reference from 74 O.S. § 840-1.6A(18) to 74 O.S. § 840-1.6A(14). The statutory citation was amended by Laws 2012, HB 3053 which was effective November 1, 2012.

260:25-17-132 removes the requirement that the initial training be a minimum of four (4) days and the annual training be a minimum of eight (8) hours and instead allows the Administrator to determine the training and allows personnel professionals to complete certain certifications in lieu of the training.

260:25-17-138 corrects the statutory reference from 74 O.S. § 840-1.6A(10) to 74 O.S. § 840-1.6A(9). The statutory citation was amended by Laws 2012, HB 3053 which was effective November 1, 2012.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATE OF PAY

260:25-7-11. Continuous Service Incentive Plan

(a) Appointing Authorities may implement a pay incentive plan ~~[74:840-1.6A(11)]~~[74:840-1.6A(10)] intended to promote continuous service within the first two years of state employment. The plan shall be limited to job families for which there are critical recruitment and retention problems as identified by the Appointing Authority.

(b) The pay incentive shall consist of scheduled periodic payments over the employee's first two (2) years of continuous service in the targeted job families, not to exceed a total of $2,500 in any ~~12 month~~twelve (12) month period. Payments may not be made prospectively or prorated. No payment shall be made under the plan until the employee has completed at least six (6) months of continuous service in the targeted job family.

(c) At the discretion of the Appointing Authority, the following persons filling positions in the targeted job families may be included in the plan:

(1) Persons not currently employed in state government;

(2) Current state employees during their first two (2) years of continuous state employment in the targeted job family; and

(3) Former state employees following a break in service of at least ~~30~~thirty (30) days.

(d) Appointing Authorities who choose to implement the pay incentive shall submit a written plan to the Administrator of the Human Capital Management Division and the Director of the Office of Management and Enterprise Services prior to implementation. The plan shall identify the job families to which the pay incentive will be applicable and shall document the critical recruitment and retention problems and the agency's rationale for the plan. The plan may provide for different pay incentives for different job families at the discretion of the Appointing Authority. The plan shall also identify the criteria for eligibility and shall include information concerning the funding of the pay incentive from the agency's existing budget. The plan shall be signed by the Appointing Authority, and this signature requirement may not be delegated. No payment shall be made under this Section until the plan has been reviewed and accepted by the Administrator.

260:25-7-12. Payment of overtime

(a) An Appointing Authority shall neither require nor allow FLSA Non-Exempt employees to work in excess of ~~40~~forty (40) hours a week without establishing and implementing a comprehensive policy for compensation. Such policy shall be in compliance with the Fair Labor Standards Act (29 U.S.C. 201 et seq.). The policy shall be made available by the Appointing Authority to interested persons upon request and the Appointing Authority shall so notify employees. Copies of such policy shall be forwarded to the Human Capital Management Division. This section is not a comprehensive listing of the provisions of the Fair Labor Standards Act (29 U.S.C, 201 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations.

(b) FLSA Non-Exempt (as defined by the Fair Labor Standards Act) employees shall be paid 1 1/2 times their regular hourly rate for each overtime hour worked. For the purposes of this rule, "Hours worked" shall not include any form of paid or unpaid leave used by an employee in lieu of the actual performance of work.

(c) The Executive Branch of the State of Oklahoma is one employer for FLSA purposes; therefore, concurrent employment in more than one agency is considered joint employment. Employees working in one or more nonexempt positions in Executive Branch agencies and who work more than ~~40~~forty (40) total hours per week shall be eligible for overtime. Employees shall be required to notify their current agency upon accepting employment with another Executive Branch agency. It will be the responsibility of all agencies involved to insure that all FLSA requirements associated with multiple agency appointments are met.

(d) Compensatory time in lieu of overtime payment at the rate of time and one-half may be given to FLSA Non-Exempt employees (as defined by the Fair Labor Standards Act) subject to the following conditions:

(1) Prior to the performance of overtime work, the Appointing Authority and the employee shall agree in writing that the employee may be required to take compensatory time in lieu of overtime pay. A written agreement is not required with respect to employees hired prior to April 15, 1986, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay (29 U.S.C. 553.23).

(2) An employee shall be permitted to use accrued compensatory time within 180 days following the pay period in which it was accrued. The balance of any unused compensatory time earned but not taken during this time period shall be paid to the employee. An Appointing Authority may grant an extension of this time period for taking compensatory time off up to an additional 180 days. Agencies shall not be allowed to extend the initial 180-day time period for employees working in an institutional setting as defined by 74:840-2.15(D) [74:840-2.15(C)].

(3) The maximum compensatory time which may be accrued by a FLSA Non- Exempt employee shall be 480 hours for those employees engaged in a public safety or firefighting activity and 240 hours for all other FLSA Non-Exempt employees.

(4) An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation for any additional overtime hours worked at the rate of 1 1/2 times their regular hourly rate of pay for each overtime hour worked.

(5) Payment for accrued compensatory time upon termination of employment with the agency shall be calculated at the average regular rate of pay for the final ~~3~~three (3) years of employment, or the final regular rate received by the employee, whichever is the higher.

(6) Overtime and compensatory time is accrued by work period, as defined by the FLSA.

(7) Compensatory time shall not be transferred from one agency to another agency.

(8) An Appointing Authority shall approve an employee's request to take compensatory time off on a particular day, unless the employee's taking compensatory time off on that day disrupts agency operations or endangers public health, safety, or property.

(9) Accrued compensatory time shall be exhausted before the granting of any annual leave for a non-exempt employee except when the employee may lose accrued leave under 260:25-15-10 and 260:2515-11(b) (5).

(10) Adjustments in scheduled work time may be made on an hour-for-hour basis within the work period.

(e) Appointing Authorities may provide compensatory time off to FLSA Exempt (as defined by the Fair Labor Standards Act) employees with the following stipulations:

(1) The compensatory time off shall be taken within time periods and policy outlined in 260:25-7-12(d).

(2) Unused compensatory time shall be taken off the books if not taken by the end of the time periods and policy outlined in 260:25-7-12(d) (2).

(~~2~~3) Compensatory time shall only be given on an hour-for-hour basis, ~~1~~one (1) hour off for each hour worked overtime. The maximum compensatory time which may be accrued by an FLSA exempt employee shall be the same as that outlined in 260:25-7-12(d) (3).

(~~3~~4) Payments shall not be made for compensatory time accrued by an employee on FLSA Exempt status for any reason, except as provided for in (f) of this Section.

(f) After submitting written notice to the Human Capital Management Division, an Appointing Authority may provide overtime payments to persons in FLSA Exempt classes based on a prevailing market condition.

SUBCHAPTER 9. RECRUITMENT AND SELECTION

PART 1. GENERAL PROVISIONS

260:25-9-9. Disqualifications

(a) Except as provided in 260:25-9-131, an Appointing Authority or the Administrator may permanently or temporarily refuse to certify, disqualify or remove a person's name from a register~~, and additionally an Appointing Authority may request that the Administrator remove a person's name from all registers for a period of two years from the date of an incident as described in (a)(4), (a)(5) (a)(8),(a)(11), and (a)14,~~ if:

(1) the person lacks any of the education, experience, or certification requirements for the job.

(2) the person lacks any other requirement established by Oklahoma statute or federal law for the job.

(3) the person fails any part of an Appointing Authority's background investigation.

(4) the person made a false statement of material fact in an application for employment or otherwise misrepresented himself or herself during the application process.

(5) the person has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment process.

(6) even with reasonable accommodation, the person is unable to perform the duties of the job or position(s) or is unable to do so without risk to himself or herself, the agency, or others, beyond that risk normally associated with such duties.

(7) the person has obtained information regarding examinations to which an applicant is not entitled, or the person has taken part in the development, administration, or correction of the examinations.

(8) the person is in possession of unauthorized materials or electronic device during an examination.

(9) the person has failed to submit an application correctly or within the prescribed time limits.

(10) the person has failed to maintain a record of current address at the Human Capital Management Division evidenced by the return of a letter by the U.S. Post Office, if properly addressed to the last address of record.

(11) the person has, within ~~2~~two (2) years prior to the date of certification, been discharged for delinquency, misconduct, absenteeism, inability to perform the same type job for which applying or other disciplinary reason or has resigned in lieu of such dismissal from any public or private employer. The Appointing Authority may extend the ~~2-year~~two (2) year restriction for good cause.

(12) the agency has exercised a selective qualification as established in 260:25-9-74.

(13) an individual is ineligible for employment due to citizenship or residence requirements as prescribed in 260:25-9-75.

(14) the person fails to reply to a request for an interview or fails to appear for a scheduled interview.

(b) The Administrator may remove or an Appointing Authority may request that the Administrator remove a person's name from all registers for a period of up to two (2) years from the date of an incident as described in (a)(4), (a)(5), (a)(8), (a)(11), and (a)14.

(~~b~~c) Action initiated by an Appointing Authority under (a) (1), (a) (7), and (a) (9) of this Section shall be subject to the approval of the Administrator. Any person who is disqualified shall be notified electronically. Applicants who have not provided an e-mail address shall be notified in writing of this action and the reason for it. At the appropriate time, the

Administrator shall notify an individual of the right to appeal. The party initiating the action, whether the Administrator or an Appointing Authority, shall be independently responsible for justifying the action, for both the nature and accuracy of the supporting information, and for the retention of that information pending appeal of the action.

SUBCHAPTER 11. EMPLOYEE ACTIONS

PART 3. PROBATIONARY EMPLOYEES

260:25-11-31. Permanent Status

Permanent status in the classified service shall not be granted until the probationary period has been successfully completed. Such status shall begin at the end of the final working day of the probationary period [74:840-4.13(D)] except as otherwise provided in the following Sections: 260:25-11-30; ~~260:25-11-34;~~260:25-11-36; and 260:25-11-32.

260:25-11-36. Leave of absence for probationary employee: Adjustment of probationary period

(a) Upon written request, a probationary employee may be granted leave of absence without pay from the agency in accordance with 260:25-15-47, Leave of absence without pay, or 260:25-15-49, Leave because of absence due to job related illness or injury.

(b) If a probationary employee is absent from work in excess of ~~30~~thirty (30) ~~continuous~~non-continuous ~~calendar~~working days, the probationary period shall be adjusted by the number of ~~calendar~~working days the probationary employee was absent. The employee shall be notified at the earliest date that the probationary period is to be adjusted. Upon the employee's return to work, notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the probationary period.

PART 5. PROMOTIONS

260:25-11-55. Trial period and probationary period for promoted employees

(a) **Trial period after intra-agency promotions.**

(1) When a classified employee is promoted intra-agency, the employee shall serve a 6 month trial period in the job to which the employee has been promoted unless the Appointing Authority waives the trial period according to the provisions of this Section. The Appointing Authority may waive the trial period at any time by giving the employee written notice of the cancellation. Waiver of the trial period makes the promotion final.

(2) If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to the former position or another in the same job family level, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. The employee shall not have the right to appeal [74:840-4.12].

(3) The promotion shall automatically become permanent at the end of the final working day of the trial period.

(4) The Appointing Authority may establish a written policy describing any agency standard for waiving the trial period and the reasons for the standard.

(b) **Trial period after interagency promotion.**

(1) An employee who is promoted interagency may, at the discretion of the receiving Appointing Authority, be required to serve a ~~6~~six (6) month trial period in the new job only if the receiving agency has the job family from which the employee was promoted in its classification plan.

(2) The trial period may be canceled at any time, making the promotion final. Before the effective date of the promotion, the employee shall be informed in writing by the Appointing Authority whether the employee will be required to serve a trial period before such promotion becomes final. The promotion shall be permanent if the Appointing Authority fails to notify the employee in writing before the effective date of the promotion that a trial period is required under this paragraph. If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to a position in the former job family in the same pay band for which the employee is qualified with the receiving agency, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. The promotion shall automatically become permanent at the end of the final working day of the trial period.

(c) If an employee on a trial period is absent from work in excess of ~~30~~ thirty (30)~~continuous~~ non-continuous ~~calendar~~ working days the trial period ~~shall~~ may be adjusted by the number of ~~calendar~~working days the employee was absent. The employee shall be notified at the earliest date that the trial period is to be adjusted. Upon the employee's return to work notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the trial period.

PART 11. OTHER TRANSACTIONS

260:25-11-110. Detail to special duty

(a) When the services of a permanent classified employee are temporarily needed in a job family or level other than the one to which the incumbent is regularly assigned the employee

may be detailed to special duty, at the discretion of the Appointing Authority, to perform the duties of the job to which temporarily assigned.

(b) A detail to special duty in no way shall affect the status, title or job family held before the detail.

(c) An employee shall not be placed on detail to special duty more than ~~12~~twelve (12) months in any ~~36~~thirty-six (36) month period.

(d) Pay upon detail to special duty is covered in 260:25-7-17.

(e) Detail to special duty is not required when an employee is temporarily assigned duties of another job for a period of less than ~~60~~sixty (60) days in any ~~12-month~~twelve (12) month period~~,~~. ~~or~~ Detail to special duty is also not required when an employee is temporarily performing such duties as part of a return to work program as a result of a work-related illness or injury, regardless of whether that period exceeds ~~60~~sixty (60) days in any ~~12-month~~ twelve (12) month period. Such temporary placement related to a return to work program shall not exceed ~~6~~six (6) months.

SUBCHAPTER 15. TIME AND LEAVE

PART 5. MISCELLANEOUS TYPES OF LEAVE

260:25-15-52. Leave sharing

~~Section 840-2.23 of Title 75 of the Oklahoma Statutes establishes eligibility, standards and procedures for state employees to share annual and sick leave.~~

(a) **Purpose.** The purpose of this Section is to interpret Section 840-2.23 of Title 74 of the Oklahoma Statutes (Section 840-2.23). Section 840-2.23 establishes eligibility, standards and procedures for state employees to share annual and sick leave.

(b) **Eligibility to receive donated annual or sick leave from state entities outside the state entity of the employee.** Before an employee will be permitted to receive donated annual and/or sick leave from a state entity that is outside the state entity for which the employee is employed, such employee must have exhausted all leave options within the state entity of the employee. Such exhaustion efforts must be evidenced by documentation showing such employee requested to receive shared leave from employees within the employing agency and was unable to receive shared leave either because no leave was available to be donated or no other employee would donate to such employee. A human resources representative or agency designee within the employing agency shall certify that the request process occurred. The Appointing Authority shall approve all submitted documentation.

(c) **Shared leave liaison authority and obligations.** The shared leave liaison shall have the authority to conduct trainings and disseminate informational publications to all state entities regarding the requirements of Section 840-2.23 and state entities' obligation to comply with Section 840-2.23. The shared leave liaison shall also have the authority to disseminate informational publications to and advise all state employees of the rights afforded to state employees under Section 840-2.23.

(d) **Shared leave liaison outreach efforts.** The shared leave liaison shall work with the requesting employee's employing agency and outside state entities, if necessary, in order to obtain shared leave hours.

(e) **Shared leave liaison intake process.** The shared leave liaison shall ensure that the requesting employee meets the eligibility criteria set forth in Section 840-2.23 in order to receive shared leave from outside state entities and the Leave of Last Resort Bank. The shared leave liaison shall verify that each requesting employee is eligible. The shared leave liaison shall review the documentation required by (b) of this Section and verify that the requesting employee has exhausted all sources of shared leave both within his or her employing entity and outside state entities. All verifications shall be maintained as a record of the Administrator.

(f) **Coordinating leave requested from the Leave of Last Resort Bank.** The shared leave liaison shall be responsible for maintaining records of the amount of leave in the Leave of Last Resort Bank. The shared leave liaison shall develop a procedure for crediting deposits and debiting withdrawals from the Bank. The shared leave liaison shall develop and perform all audit functions necessary to administer the Bank.

(g) **Election of annual or sick leave to be deposited into the Leave of Last Resort Bank.** An employee must acknowledge that his or her annual and/ or sick leave will be deposited into the Leave of Last Resort Bank. Such acknowledgment shall be in writing and in the form prescribed by the Administrator. The acknowledgement must state the employee understands that he or she will receive no monetary compensation for the donation of annual and/ or sick leave, the employee understands any sick leave available for donation could be applied as a credit for years of service under the applicable retirement system or reinstated in accordance with Section 840-2.20(A)(6) of Title 74, and the employee affirms that such donation is given voluntarily. The acknowledgement may include other such information as deemed necessary by the Administrator.

(h) **Development of forms.** The Administrator shall have the authority to develop forms to be used by all state entities to document the requirements of this Section.

(i) **Development of policies and procedures.** The Administrator shall have the authority to develop policies and procedures regarding the administration of the Leave of Last Resort Bank and the requirements of Section 840-2.23 of Title 74 and this Section. The Administrator shall publish all policies and procedures on the Office of Management and Enterprise Services website.

SUBCHAPTER 17. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS

PART 9. MANDATORY SUPERVISORY TRAINING

260:25-17-91. Definitions

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

"One hour of training" means one (1) hour of learner interaction with the content of the learning activity, which includes classroom, self-paced instruction, assignments, or assessments that support the stated learning outcome. The Administrator shall develop a standard for assessing and assigning hours to learning content.

"Online learning format" means any live or self-paced learning content delivered remotely using online technology.

"Supervisory training" means courses or training related to the effective performance of an agency manager or supervisor [74:840-3.1].

"Twelve hours of training" means ~~the equivalent of 2 training days that include at least 6 hours of instruction a day~~twelve (12) hours of learner interaction with no more than six (6) hours spent on online learning formats. Twelve hours (12) of training are also equivalent to 1.2 continuing education units (CEUs).

"Twenty-four hours of training" means ~~the equivalent of 4 training days that include at least 6 hours of instruction a day~~ twenty-four (24) hours of learner interaction with no more than twelve (12) hours spent on online learning formats. Twenty-four (24) hours of training are also equivalent to 2.4 continuing education units (CEUs).

PART 11. CERTIFIED PUBLIC MANAGER PROGRAM

260:25-17-110. Purpose

(a) The rules in this Part establish policies and procedures to implement the Certified Public Manager Program® in accordance with ~~Section 840-1.6A(10)~~Section 840-1.6A(9) of Title 74 of the Oklahoma Statutes. The Program is administered by the Office of Management and Enterprise Services.

(b) It is the purpose of the Certified Public Manager Program® to develop the management skills of public sector employees and to assist state agencies and other public sector organizations in the identification and development of future leaders.

260:25-17-111. Definitions

In addition to words and defined in OAC 455:10-1-2 or 260:25-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise.

"Organizations" means municipalities, counties, Indian Nations, and the federal government.

"Program" means the Certified Public Manager Program® authorized by Section 840-1.6A(10) of Title 74 of the Oklahoma Statutes.

"Training section" means a group of participants who complete the program in the same period of time.

260:25-17-112. Program description

(a) **Eligibility.** Employees of state agencies in all branches of state government who are nominated by the Appointing Authority or designee may participate in the Program. Additionally, employees of organizations, who are nominated by the chief administrative officer or designee may participate in the Program.

(b) **Nomination procedure.**

(1) The nomination process and/or criteria will be determined by each agency. The Certified Public Manager Program® nomination form and information booklet are available from the Human Capital Management Division. The nomination form solicits information about the nominee and the nominating agency or organization and shall be signed by the nominee, the nominee's supervisor, and the agency's Appointing Authority or designee or the organization's chief administrative officer or designee. The information booklet provides information about the nomination process, a description of the Program, courses required to complete the Program, and the role of Higher Education in the Program.

(2) The agency or organization may nominate an employee for participation in the Program ~~at any time~~during designated enrollment periods by forwarding a completed nomination form to the Certified Public Manager Program® at the Human Capital Management Division prior to the end of the enrollment period.

(c) **Enrollment in the Program.** The Administrator shall enroll an employee in the Certified Public Manager Program® who has been nominated by his or her agency or organization in ~~accordance with the procedures described in this section~~ the first available training section.

(d) **Communication with the Human Capital Management Division.** Interested persons may direct communications to the attention of the Oklahoma Certified Public Manager Program® in accordance with 260:1-1-12.

(e) **Experience credit.** Graduation from the Program as a "Certified Public Manager®" shall substitute for one (1) year of professional experience in business or public administration on any Merit System job class requiring such experience as part of the minimum qualifications.

260:25-17-113. Program requirements for candidates

(a) **Graduation requirements.** To graduate from the Program as a "Certified Public Manager®", a candidate shall complete all of the following graduation requirements ~~within 5 years after enrollment in the program~~offered during the eighteen (18) month training section:

(1) Attend~~300 hours of management training courses. At least 200 of these hours shall be in Training and Development courses~~ all scheduled courses, project sessions and learning events prescribed by the Human Capital Management Division and specified in the information packet described in 260:25-17-112. The remaining hours shall be in ~~management related elective courses~~program pre-work requirements and other assignments;

(2) ~~Pass four written exams on the topics covered in the required coursework;~~Attend at least 75 percent of the

scheduled class dates. Make up work will be provided for all in-person classes. Even if all makeup work is completed, but the candidate has failed to attend at least seventy-five (75) percent of the required scheduled sessions, they are eligible to be removed from the training section.

~~(3) Complete three written project papers relating to the candidate's job and the courses taken;~~

(~~4~~3) Pay the Program fees described in 260:25-17-115 in full before graduation.

~~(b) **Active status.**~~

~~(1) To remain an active participant in the Program, a candidate shall continue making progress toward completion of the Program requirements described in (a) of this Section during each 12 month period. The candidate shall notify the Administrator of the existence of circumstances that may affect the candidate's ability to remain active in the Program.~~

~~(2) If the candidate does not make progress toward completion of the Program requirements described in (a) of this Section within a 12 month period, the Administrator or designee shall notify the candidate and the candidate's supervisor in writing that the candidate shall make progress within 6 months from the date of the notification or be considered inactive.~~

~~(c) **Inactive status.**~~

~~(1) If the candidate does not make progress toward completion of the Program requirements described in (a) of this Section within an 18 month period, the Administrator shall notify the candidate and the candidate's supervisor in writing that the candidate has been placed on inactive status. If a candidate placed on inactive status desires to return to active status he or shall notify the Administrator or designee in writing of his or her intent to continue to make progress toward completion of the Program requirements and shall submit a plan for completing those requirements.~~

~~(2) If the candidate does not make progress toward completion of the Program requirements described in (a) of this Section within a 24 month period, the Administrator or designee shall place the candidate on permanent inactive status.~~

~~(d) **Return to active status.** The Administrator shall return a candidate placed on permanent inactive status to active status in the Program if:~~

~~(1) The employing agency or organization re-nominates the candidate;~~

~~(2) A committee consisting of the Administrator or designee, an instructor, and a Certified Public Manager® approves the candidate's plan for completion of the Program; and~~

~~(3) The candidate repeats any required courses which have been updated or redesigned since he or she completed them.~~

(~~e~~b) **Removal of a candidate from the Program.** ~~Only the nominating agency or organization may remove a candidate from the Program.~~ The nominating agency or organization and the Administrator shall have the right to remove a candidate from the Program. Any candidate who fails to complete a training section will be given the greater of two (2) additional training section cycles or three (3) years to re-enroll in another training section without being charged. Hours earned for sessions attended or work completed in a previous training section are not transferrable to another training section.

260:25-17-114. Program requirements for nominating agency or organization

The nominating agency or organization shall:

(1) Provide time for the candidate, during his or her work day, to attend training courses, including the Capstone, prepare class assignments, study for examinations, and work on Program projects;

(2) Allow candidates to use agency or organization issues ~~or problems for their four job related projects; and~~ for classroom, project, and portfolio assignments;

(3) Provide financial support to agency candidates, as required by the Program~~.~~;

(4) Review and approve employee absences for scheduled cohort dates prior to sending the nomination to HCM; and

(5) Allow managers to participate in the employee's involvement in the program for activities such as attending project presentations, answering survey questions or providing employee assessments.

260:25-17-115. Program fees

(a) The fee for participation shall be established by the Administrator pursuant to ~~74:840-1.6A(10)~~74:840-1.6A(9).

(b) Should the fee structure change during the course of an employee's participation in the program, fees shall remain consistent with the fee assessed at the time of enrollment.

PART 13. PERSONNEL PROFESSIONALS TRAINING AND CERTIFICATION

260:25-17-130. Purpose

The rules in this Part implement Section ~~840-1.6A(18)~~Section 840-1.6A(14) of Title 74 of the Oklahoma Statutes, which requires continuing training and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. The rules in this Part apply to both Merit System and non-Merit System agencies, and to both classified and unclassified personnel professionals. The rules establish policies and procedures necessary to implement personnel professionals training requirements.

260:25-17-132. Personnel professionals training requirements

(a) Beginning July 15, 1996, all employees assigned to professional personnel positions in the executive branch, excluding employees within The Oklahoma State System of Higher Education, shall attend ~~a minimum of 4 days or 2.4~~

~~Continuing Education Units (CEUs) of~~ training in professional personnel administration conducted ~~through~~and determined by the Human Capital Management Division, and successfully complete an examination prescribed by the Administrator in order to attain certification as a personnel professional. In lieu of training conducted by the Human Capital Management Division, employees can complete a Professional in Human Resources (PHR) or a Senior Professional in Human Resources (SPHR) certification from the Human Resource Certification Institute (HRCI) or a Certified Professional or Senior Certified Professional certification form the International Public Management Association for Human Resources (IPMA-HR). Employees appointed to personnel professional positions after July 15, 1996, shall attend the training and successfully complete the examination within ~~6 months~~one (1) year of appointment. ~~[74:840-1.6A(18)]~~[74:840-1.6A(14)]

(b) Service as an instructor for all or part of the course may be counted toward the training requirement. Employees serving as instructors must successfully complete the prescribed examination to attain certification as a personnel professional.

(c) Employees who have been certified as personnel professionals by the Administrator shall thereafter annually complete ~~a minimum of 8 hours of~~training conducted and determined by the Human Capital Management Division in professional personnel administration to maintain certification. ~~[74:840-1.6A(18)]~~[74:840-1.6A(14)] The Administrator may approve training that is not conducted by the Human Capital Management Division as meeting the annual training requirements.

(d) The Appointing Authority of each agency with an employee assigned to a professional personnel position shall ensure the employee is notified and scheduled to attend required personnel professionals training and shall make time available for the employee to complete the training. ~~[74:840-1.6A(18)]~~[74:840-1.6A(14)]

260:25-17-138. Personnel professionals training fees

The fee for participation shall be established by the Administrator pursuant to ~~74:840-1.6A(10)~~74:840-1.6A(9).

[OAR Docket #19-648; filed 6-21-19]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 45. EMPLOYEES GROUP INSURANCE DIVISION - ADMINISTRATIVE AND GENERAL PROVISIONS

[OAR Docket #19-645]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Purpose, Definitions, Rules and References
260:45-1-1. Purpose [AMENDED]
Subchapter 3. Records and Information
260:45-3-4. HealthChoice authorization~~Authorization~~ for release of medical records [AMENDED]
Subchapter 5. Grievance Panel Procedures
260:45-5-1. Request for hearing [AMENDED]
260:45-5-4. Grievance hearings conducted by the three [3] member Grievance Panel [AMENDED]
Subchapter 7. Declaratory Rulings [REVOKED]
260:45-7-1. Petitions for declaratory rulings [REVOKED]
260:45-7-2. Final rulings [REVOKED]
260:45-7-3. Judicial review [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. §34.6(8).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 20, 2018
COMMENT PERIOD:
December 17, 2018 through January 23, 2019
PUBLIC HEARING:
January 23, 2019
ADOPTION:
March 7, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 8, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE DATE:
January 1, 2020
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.
CONTACT PERSON:
Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2020:

SUBCHAPTER 1. PURPOSE, DEFINITIONS, RULES AND REFERENCES

260:45-1-1. Purpose

The purpose of this chapter is to outline the structure of the Office of Management and Enterprise Services (OMES) Employees Group Insurance Division (EGID), to outline the use and confidentiality of members' personal health information and to identify the availability and procedures to be used to access a grievance hearing.

SUBCHAPTER 3. RECORDS AND INFORMATION

260:45-3-4. HealthChoice authorization~~Authorization~~ for release of medical records

Through the submission of claims, each member for whom coverage is applied authorizes, without further notice or consent, EGID to obtain from any provider of medical services, all records and information pertaining to that service which will aid in the proper payment of said claims. EGID is further authorized to use and release to third party payers any information and records so obtained. In all instances, the Rules of Confidentiality shall be applied without regard to the requirements of 260:45-3-2.

SUBCHAPTER 5. GRIEVANCE PANEL PROCEDURES

260:45-5-1. Request for hearing

(a) **Grievances.** EGID has established procedures by which:

(1) Independent Review Organizations shall act as an appeals body for complaints by insured members regarding adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit,

(2) A three [3] member Grievance Panel shall act as an appeals body for complaints by insured members regarding all other issues.

(b) **Court Administrator Appointees.** The Court Administrator shall designate Grievance Panel members as shall be necessary. The members of the Grievance Panel shall consist of two [2] Attorneys licensed to practice law in this state and one [1] state licensed health care professional or health care administrator who has at least three [3] years practical experience, has had or has admitting privileges to a State of Oklahoma hospital, has a working knowledge of prescription medication, or has worked in an administrative capacity at some point in their career.

(c) **Governor Appointees.** The state health care professional shall be appointed by the Governor. At the Governor's discretion, one or more qualified individuals may also be appointed as an alternate to serve on the Grievance Panel in the event the Governor's primary appointee becomes unable to serve.

(d) **Right to a Hearing.** Any covered member who ~~requests~~ has exhausted EGID's internal review procedures and has timely requested in writing a hearing before the Grievance Panel pursuant to 260:45-5-1(a)(2) shall receive a hearing in person or through licensed counsel before the panel.

(e) **Remedy.** Grievance procedures conducted by the three [3] member Grievance Panel shall be subject to the Oklahoma Administrative Procedures Act, including provisions thereof for review of agency decisions by the district court.

(f) **Failure to timely submit hearing request.** All grievance requests must be filed within one [1] year from the date the member is notified of a denial of the claim, benefit or coverage. After more than one [1] year from the date the member was first notified of an allowance, payment, or denial of a claim, benefit, coverage, or other matter, the matter shall be deemed finally resolved.

(g) **Aggrieved member covered by an HMO.** Any member covered by an HMO is entitled to a hearing before the Panel in the same manner as all other covered members for those matters not covered by an Independent Review Organization. The member must exhaust the HMO's internal grievance procedure, except for an emergency or if the HMO fails to timely respond, before requesting a Grievance Panel hearing. The member must file, along with his request for hearing, a written certification from the HMO that the member has exhausted said procedure, or a detailed explanation of the emergency or of the HMO's failure to respond.

(h) **Submission of Grievance request.** Any Grievance request shall be in writing on a form provided by EGID for such purpose or in writing by the employee if in substantial compliance with the form and shall contain the following information:

(1) Name of employee, Social Security Number and address;

(2) Name of dependent for whom claim was submitted, if not the covered employee;

(3) Name of employee's employing entity, location, and identifying number;

(4) Nature of claim: Health, Dental, Life, Eligibility, Disability, HIPAA or HMO;

(5) Date claim submitted for payment, claim number;

(6) The reason given, if any, by the claims administration contractor for denying the claim in whole or in part; and

(7) A short statement as to the nature of the illness or injury giving rise to the claim.

(i) **Mailing address for submission of Request for Hearing.** The Request for Hearing shall be mailed or delivered to EGID to the attention of Attorney - Grievance Procedures, at 3545 N. W. 58th Street, Suite 600, Oklahoma City, Oklahoma 73112.

260:45-5-4. Grievance hearings conducted by the three [3] member Grievance Panel

(a) **Witness list.** Each party must submit, in writing, at least forty-eight [48] hours prior to the date of a grievance hearing a complete list of witnesses he or she intends to call, along with a brief comment as to the nature of the testimony. Witnesses shall not be called to testify at the hearing unless notice has been given to the opposing parties.

(b) **Assignment of Panel and Chairman.** All hearings shall be held before a three-member Grievance Panel, as assigned by the Office of the Administrative Director of the Courts. All hearings shall be conducted in accordance with and be governed by the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. §301-326. At each convening of the Panel, one member shall be designated to act as the Chairman.

(c) **Admissibility of evidence.** Rulings on admissibility of evidence shall be made by the Panel Chairman; provided, however, that the remaining members of the Panel may, by affirmative vote, overrule the Chairman's decision, on their own motion or upon motion of any party to the hearing.

(d) **Oaths and subpoena.** The Chairman of the Panel shall have the authority to administer oaths for obtaining testimony for the hearing; and any member of the Panel or the Attorney representing EGID shall have the authority to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects for the hearing. Said subpoenas may be served by any duly qualified officer of the law, or any employee of EGID in any manner prescribed for the service of a subpoena in a civil action.

(e) **Court reporter.** The Attorney representing EGID shall cause a recording of the proceedings to be made by a certified court reporter at EGID's expense. If transcribed, such written transcript shall become a part of the official record of the hearing, and a copy shall be furnished to any other party having a direct interest therein at the request and expense of such party. The cost of preparing the written transcript of the hearing and providing a copy of the transcript to the other party shall be paid by the party on whose behalf the written transcript is requested.

(f) **Procedure.** In all hearings, opportunity shall be afforded the party or parties requesting same to respond and present evidence and argument on all issues involved. The hearing shall be conducted in an orderly manner. The party or parties requesting the hearing shall appear in person or through licensed counsel and be heard first; those, if any, who oppose the relief sought by the requesting party shall next be heard. Each party shall have the opportunity to present closing arguments.

(g) **Standard of review.** When considering complaints by insured members, the three [3] member Grievance Panel shall determine by a preponderance of the evidence whether EGID has followed its statutes, rules, plan documents, policies and internal procedures. The Grievance Panel shall not expand upon or override any EGID statutes, rules, plan documents, policies and internal procedures.

SUBCHAPTER 7. DECLARATORY RULINGS [REVOKED]

260:45-7-1. Petitions for declaratory rulings [REVOKED]

~~Petitions for declaratory rulings as to the applicability of any rule or order of EGID shall be in writing and must be filed with EGID. The petition must state with clarity the issues to be decided and any legal authority which may be applicable.~~

260:45-7-2. Final rulings [REVOKED]

~~Following a hearing on the issues set forth in the Petition for a Declaratory Ruling, the Grievance Panel shall issue a written final ruling within sixty [60] days of hearing a petition for declaratory ruling. The final ruling shall be mailed to the person requesting the ruling and shall be kept on file in the EGID office for public inspection.~~

260:45-7-3. Judicial review [REVOKED]

~~Final declaratory rulings of EGID are subject to judicial review pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.~~

[OAR Docket #19-645; filed 6-21-19]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 50. EMPLOYEES GROUP INSURANCE DIVISION - HEALTH, DENTAL, VISION AND LIFE PLANS

[OAR Docket #19-646]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Purpose and Definitions
260:50-1-2. Definitions [AMENDED]
Subchapter 3. Administration of Plans
260:50-3-5. Responsibility for premium payment [AMENDED]
260:50-3-9. Payment of HealthChoice health, dental and life benefits [AMENDED]
260:50-3-10. Timely filing of HealthChoice health and dental claims [AMENDED]
260:50-3-11. HealthChoice Examination [AMENDED]
260:50-3-16. Participating entities [AMENDED]
260:50-3-17. Dependents [AMENDED]
260:50-3-21. Continuation of coverage for survivors [AMENDED]
260:50-3-22. Mid-year benefit election changes [AMENDED]
260:50-3-25. Basic disclosure plan for HealthChoice Medicare beneficiaries [AMENDED]
Subchapter 5. Coverage and Limitations
Part 1. Policy Provisions
260:50-5-3. HealthChoice approval~~Approval~~ for emergency treatment by non-Network providers [AMENDED]
Part 3. ~~The~~HealthChoice Plans
260:50-5-10. Plan limits [AMENDED]
260:50-5-11. Covered charges [AMENDED]
Part 5. HealthChoiceLife Benefits
Part 7. Limitations and Exclusions for HealthChoice Life Plan
Part 9. HealthChoice Dental Benefits, Limitations and Exclusions
260:50-5-30. Scope of coverage~~; four classes of coverage~~ [AMENDED]
260:50-5-32. HealthChoice Dental limitations and exclusions [AMENDED]
Part 11. HealthChoice Medicare Supplement
Part 13. Coordination of Health and Dental benefits [REVOKED]
260:50-5-44. Application of retiree benefit allowance [REVOKED]
260:50-5-45. Definitions [REVOKED]
260:50-5-46. Effect on benefits [REVOKED]
260:50-5-47. Facility of benefit payment [REVOKED]
260:50-5-48. Right of recovery [REVOKED]
Part 15. HealthChoice Subrogation

AUTHORITY:
The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. §34.6(8).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 20, 2018

COMMENT PERIOD:
December 17, 2018 through January 23, 2019

PUBLIC HEARING:
January 23, 2019

ADOPTION:
March 7, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 8, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE DATE:
January 1, 2020
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.
CONTACT PERSON:
Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2020:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

260:50-1-2. Definitions

The following words and terms as defined by EGID, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

"Administrative error" occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in underpaid premiums, full payment to EGID shall be required before coverage elected by the member can be made effective. If overpayment occurs, EGID shall refund overpaid funds to the appropriate party.

"Administrator" means the Administrator of the Employees Group Insurance Division or a designee.

"Allowable fee" means the maximum allowed amount based on the HealthChoice Network Provider Contracts payable to a provider by EGID and the member for covered services.

"Attorney representing EGID" means any attorney designated by the Administrator to appear on behalf of EGID.

"The Board" means the seven [7] Oklahoma Employees Insurance and Benefits Board members designated by statute [74 O.S. §1303(1)].

"Business Associate" shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

"Carrier" means the State of Oklahoma.

"Comprehensive benefits" means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by EGID. Such benefits shall be provided on a co-payment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by EGID. [74 O.S. §1303 (14)]

"Cosmetic procedure" means a procedure that primarily serves to improve appearance.

"Current employee" means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

"Custodial care" means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

"Dependent" means the primary member's spouse (if not legally separated by court order), including common-law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child, child for whom the member has been granted legal guardianship or child legally placed with the primary member for adoption up to the child's twenty-sixth [26th] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(14)]. See additional eligibility criteria for disabled dependents over the age of twenty-six [26] at 260:50-3-18. Participating employer groups may have a more restrictive definition of Dependent.

"Durable medical equipment" means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.

"Emergency" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act (42 U.S.C. 1395dd (e)(1)(A)). (In that provision of the Social Security Act, clause (i) refers to placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; clause (ii) refers to serious impairment to bodily functions; and clause (iii) refers to serious dysfunction of any bodily organ or part.)

"Enrollment period" means the time period in which an individual may make an election of coverage or changes to coverage in effect.

"Excepted Benefits" means the four categories of benefits as established in section 2791 of the PHS Act, section 733 of ERISA and section 9832 of the Internal Revenue Code, as summarized in IRS Bulletin 2015-14 and subsequent regulatory guidance. These Excepted Benefits include but are not limited to vision coverage, dental coverage, long-term care insurance, Medicare supplement coverage, automobile liability insurance, workers compensation, accidental death and dismemberment insurance and specific disease coverage (such as cancer).

"Facility" means any hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory which is duly licensed under the laws of the state of operation, Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF).

"Fee schedule" means a listing of one or more allowable fees.

"Former participating employees and dependents" means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.

"Health information" means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

"Home health care" means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home health care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

"Hospice care" means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

"Inaccurate or erroneous information" means materially erroneous, false, inaccurate, or misleading information that was intentionally submitted in order to obtain a specific coverage.

"Initial enrollment period" means the first thirty [30] days following the employee's entry-on-duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

"Insurance Coordinator" means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.

"Maintenance care" means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

"Medically necessary" means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by EGID. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

"Members" means all persons covered by one or more of the group insurance plans offered by EGID including eligible current and qualified former employees of participating entities and their eligible covered dependents.

"Mental health and substance abuse" means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

"Network provider" means a practitioner who or facility that is duly licensed under the laws of the state in which the "Network provider" operates and/or is accredited by a nationally recognized accrediting organization such as The

Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF) approved by state or federal guidelines, and has entered into a contract with EGID to accept scheduled reimbursement for covered health care services and supplies provided to members.

"Non-Network out-of-pocket" means the member's expenses include the total of the member's deductibles and co-insurance costs plus all amounts that continue to be charged by the non-Network provider after the HealthChoice allowable fees have been paid.

"OEIBB" means Oklahoma Employees Insurance and Benefits Board.

"Open enrollment period" means a limited period of time as approved by either EGID or the Legislature in which a specified group of individuals are permitted to enroll.

"Option period" means the time set aside at least annually by EGID in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by EGID.

"Orthodontic limitation" means an individual who enrolls in the Dental Plan will not be eligible for any orthodontic benefits for services occurring within the first twelve [12] months after the effective date of coverage. Continuing orthodontic services for newly hired employees who had previous group dental coverage will be paid by prorating or according to plan benefits.

"Other hospital services and supplies" means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.

"Participating entity" means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma Employees Insurance and Benefits' Act.

"The Plan or Plans" means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by EGID. Such benefits shall be provided on a coinsurance basis and the insured pays a proportion of the cost of such benefits.

"Primary insured" means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.

"Prosthetic appliance" means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

"Provider" means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.

"Qualifying Event" means an event that changes a member's family or health insurance situation and qualifies the member and/or dependent for a special enrollment period. The most common qualifying life events are the loss of health care coverage, a change in household (such as marriage or birth of a child), or a change of residence or other federally required mandates. A complete summary of qualifying events are set out in Title 26, Treasury Regulations, Section 125.

"Schedule of benefits" means the EGID plan description of one or more covered services.

"Skilled care" means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

SUBCHAPTER 3. ADMINISTRATION OF PLANS

260:50-3-5. Responsibility for premium payment

(a) **Participating entity premiums.** Employer and employee premiums for participating entities are due to EGID no later than the tenth [10th] day of each month following the month of coverage. The first payroll deductions for insurance premiums of individuals paid bi-weekly will be withheld from the first pay period that extends into the month during which insurance coverage begins. It is ultimately the employing agency's responsibility to check and verify that premiums paid to EGID are a true and accurate accounting of the member's approved coverage selections. If premium for coverage selected by the employee differs from the amount deducted from the member's check, then the participating entity is responsible for payment to EGID for any deficiencies in premium for the member's coverage. Any shortage of premiums due and payable will result in suspension of benefits for Plan participants.

(1) An employee may continue coverage while on approved leave without pay status for up to twenty-four [24] months as long as the entity continues to remit premiums with the entity's monthly payment. The twenty-four [24] month limitation shall be extended to eight [8] years for education employees who are absent from employment because of election or appointment as a local, state, or national education association officer. Except as protected by federal statute, employees on leave whose premiums are not remitted in a timely manner shall have their coverage terminated at the end of the month for which last payment was received. If coverage is terminated for non-payment all coverage is terminated. Upon return to work, the employee may re-enroll. All Plan limitations apply and evidence of insurability is required to re-enroll in any life coverage.

(2) Provided that if a State employee is on leave without pay due to an injury or illness arising out of the course of his employment, the employee may continue the insurance during the maximum period of the time allowed by law, and the employing agency shall pay the ~~entire employee premium~~benefit allowance allowed by law.

(3) An employee may continue coverage while on suspension without pay for up to ninety [90] days following

the date of suspension or the duration of the administrative appeals process, whichever is greater, as long as premiums are remitted by the entity for the coverage.

(4) Collecting any employee share from an employee on leave without pay or suspension without pay is the responsibility of the entity.

(b) **Premiums remitted by retirement systems.** Any State of Oklahoma retirement system establishing a withholding system for its retired employees shall forward the retirement contribution and employees' withholding to EGID by the tenth [10th] of the month following the month for which payment is due. This same time frame also applies to members receiving disability benefits.

(c) **Premiums remitted by former employees, COBRA participants or survivors.** Premiums are due by the twentieth [20th] day of the month of coverage. All premiums due, in excess of the retirement system contributions, shall be paid by the member. The member may elect to have the premiums withheld from their retirement benefit if the retirement benefit is sufficient to cover the entire premium. If the total monthly premium is the same as or greater than the retirement benefit, the member shall remit the entire amount due directly to EGID.

260:50-3-9. Payment of HealthChoice health, dental and life benefits

(a) Life insurance benefits are payable to the beneficiary designated by the employee. Premiums and overpaid disability benefits due and payable to EGID at the time of the insured's death may be withheld from life insurance benefits before payment of the remainder to the beneficiary or estate. Life proceeds are not assignable, except a beneficiary may assign proceeds in an amount equal to the decedent's burial expenses. If no beneficiary form is on file with EGID, benefits will be paid to the decedent's estate.

(b) Health and dental benefits are payable to the employee or the provider. If any health or dental benefits remain unpaid at the employee's death, EGID, may at its option, pay the benefits to the employee's estate or to any one or more relatives such as follows: spouse, father, mother, children, brothers or sisters. Any such payment will constitute complete discharge of EGID's obligation to the extent of the amount paid.

(c) If a minor or person otherwise legally incapable of giving a valid receipt of discharge of any payment is selected as a beneficiary, a guardian must be appointed by a court of competent jurisdiction before benefits shall be paid.

260:50-3-10. Timely filing of HealthChoice health and dental claims

Proof of health and dental claims for services received (bill/receipt) must be furnished no later than three hundred sixty-five [365] days after the date of service. If such proof is not furnished within the time allowed, at EGID's discretion the claim will still be considered if the employee shows that it was not reasonably possible to furnish the notice of proof within the specified time and that the notice of proof was furnished as soon as reasonably possible.

260:50-3-11. HealthChoice Examination

EGID reserves the right and opportunity to examine the person whose injury or sickness is the basis of a claim as often as may be reasonable during the pending of the claim.

260:50-3-16. Participating entities

(a) **Participation in plans offered by EGID.** Entities electing to participate in the dental, life, vision, or disability plans offered by EGID must participate in ~~the health plan,~~one of the authorized health plans, unless the Administrator grants a waiver. Coverage offered by EGID to eligible education employees will also be offered to all elected members of the school board for that entity.

(b) **Enrollment in group term life benefits.** An entity may elect to participate in the group term life coverage offered by EGID. This includes basic and optional supplemental life coverage for the employee and dependent life coverage. Entities electing to participate in the life plan offered by EGID must participate in the health plan, unless the Administrator grants a waiver.

(c) **Non-participating entities in other group plans.** The group plans offered by EGID shall not be offered to any entity which is participating in any other group insurance program, regardless of the percentage or number of employees eligible to enroll, unless the Administrator grants a waiver.

(d) **Right of Board to approve or deny applications for coverage.** EGID shall retain the right to approve or deny any employer group applications for coverage. Upon approval, coverage will become effective at 12:01 a.m. on the first [1st] day of the month following the month in which approval is granted unless a subsequent month is requested and approved in advance.

(e) **Coverage without preexisting conditions.** When an entity enrolls all employees of the new entity are covered without penalty for preexisting conditions.

(f) **Enrollment of all individuals presently insured.** Upon the group initial enrollment of an institution of higher education, all individuals presently insured by the institution's previous group health plan may become enrolled. If any such individual does not meet the eligibility requirements of this plan, they are eligible for coverage only for the remaining period of the institution's contractual liability. The institution must provide written proof of its contractual liability at the time of said individual's enrollment.

(g) **Attestation of continuous coverage for retirees.** Upon beginning or reinstating participation in health coverage offered by EGID, the entity must provide EGID with an attestation that retirees over age sixty-five [65] that will gain coverage through EGID have had continuous creditable coverage for prescription drugs (coverage that is at least as good as Medicare's) since the retirees became eligible for Medicare. The entity must provide an accurate list of any retiree over age sixty-five [65] that does not meet this requirement in order for EGID to properly report uncovered months to Medicare.

260:50-3-17. Dependents

Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the insurance change form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at that time shall not become available until the next enrollment period. Dependents are not eligible for any coverage in which the member is not enrolled. Exceptions may apply for dependents electing COBRA or Survivor coverage. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other corresponding and verifiable health, group dental or vision coverage. The member can elect not to cover dependents who do not reside with the member, are married, are not financially dependent on the member for support, have other coverage or are eligible for Indian or military health benefits. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the Insurance/Benefits Coordinator. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life. Excepted Benefits do not qualify as other coverage for purposes of this rule.

(1) ~~When the parent is covered by health insurance, in order for an employee to retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) for his or her own newborn child, a completed insurance change form and any appropriate premium for the month of birth must be furnished to the Insurance/Benefits Coordinator within thirty [30] days after the date of birth of the newborn. Claims incurred for inpatient hospital treatment beyond the first forty-eight [48] or ninety-six [96] hours may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan. HealthChoice newborn limited benefit: a newborn has limited coverage for a birth for the first forty-eight [48] hours following a vaginal delivery or for the first ninety-six [96] hours following a C-section delivery without an additional premium. There are no benefits for services in addition to the routine hospital stay if the newborn is not enrolled for the month of the birth and premiums are not paid for that month. A Newborn Benefit Waiver must be completed to exclude a newborn from the Newborn Benefit.~~Newborns may be added to coverage with the completion of an insurance change form and remittance of any appropriate premium for the month of birth to the Insurance/Benefit Coordinator within thirty [30] days after the date of birth of the newborn.

~~(2) Newborns must be added the first of the month of the child's birth by filling out an Insurance Change Form within thirty [30] days after birth of the newborn.~~

(~~3~~2) When one or more eligible dependents are currently covered, the newborn must be added to the same coverage.

(~~4~~3) Where a newborn is added to coverage, all other eligible dependents must be enrolled in coverage if they are not currently enrolled. ~~A member can waive health or dental coverage for their spouse.~~A member can waive health, dental, or vision coverage for their spouse.

~~(5) If a member accepts newborn benefits for the birth of his or her child but does not retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) as a result of the member's failure to furnish his or her Insurance/Benefits Coordinator with a completed insurance change form and any appropriate premium for the month of the newborn's birth within thirty [30] days after the birth of the newborn:~~

~~(A) There is no additional premium for the newborn benefit.~~

~~(B) Enrollment of other eligible dependents is not required.~~

~~(6) If optional coverage is not selected until after the employee's effective date, but within the member's initial thirty [30] day enrollment period, the optional coverage will be effective the first [1st] day of the month following the date the optional coverage was elected.~~

~~(7) In the event a dependent is hospital confined on the day his health coverage would otherwise become effective, health coverage for that dependent is not effective until the day following his or her final discharge from the hospital.~~

(~~8~~4) Eligible dependents who lose other health, group dental or vision insurance coverage may be added to the equivalent health, dental or vision coverage offered through EGID within thirty [30] days after the loss of the other insurance coverage if those dependents have been continuously covered by the other health, dental or vision insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage this Plan shall become effective on the first [1st] day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following notice of the loss of other coverage. Excepted Benefits do not qualify as other health coverage for purposes of this rule.

(~~9~~5) Newly acquired dependents may be added if the election is made within thirty [30] days after the qualifying event, or other federally required mandate, or during the annual enrollment period as established by EGID. Documentation proving the qualifying event may be required. The effective date of coverage will be the first [1st] day of the month following notification to EGID of the qualified event except for newborn or adopted dependent children.

(~~10~~6) Provided all other eligibility requirements are satisfied, adopted eligible dependent children, eligible children for which guardianship has been newly granted to the insured or the insured's spouse, or eligible children of which the insured has been newly granted physical custody pending adoption, guardianship, or other legal custody, may be covered from the first [1st] day they are

placed in the insured's physical custody, only upon payment of the full monthly premium for that individual, not prorated, and only after written notice has been given to EGID within thirty [30] days after obtaining physical custody. Copies of all documents relating to the matter are also required.

(~~11~~7) At the insured's option, coverage for eligible dependent children newly placed in the insured's physical custody may become effective on the first [1st] day of the second month following placement, if written notice is provided within thirty [30] days after the date of placement, or at the next option period as established by EGID.

(~~12~~8) In the absence of a court order indicating adoption, guardianship, legal separation or divorce, an insured may apply for coverage on other unmarried children living with the insured provided: (1) the insured submits a copy of his most recent federal income tax return showing the child was listed as the insured's dependent for income tax deduction purposes; and (2) if the last federal income tax form requested above does not list the child, the insured shall be required to provide an Application for Coverage for Other Dependent Children form prescribed by the Plan; and (3) coverage, if approved, shall begin on the first [1st] day of the month following approval, and will never apply retroactively except in the case of a newborn which shall be added the first [1st] of the month of birth; and (4) all other applicable eligibility requirements must be satisfied; and (5) all necessary premiums have been paid. EGID shall have the right to verify the dependent's status, to request copies of the insured's federal income tax returns from time to time, and to discontinue coverage for such dependents if they are found to be ineligible for any reason.

260:50-3-21. Continuation of coverage for survivors

(a) The surviving dependents of a deceased employee who was on current work status or authorized leave at time of death, or of a participating retiree, or any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the ~~State Employees~~HealthChoice Disability Plan, may continue the health or dental benefits in force provided said dependents pay the full cost of such coverage and they were covered as eligible dependents at the time of such death. Such election must be made within sixty [60] days after death and coverage must be continuous. The eligibility for said benefits shall terminate for the surviving children when such children cease to qualify as dependents under the provisions of this plan.

(b) The surviving spouse of a deceased employee who was on active work status or authorized leave at time of death, or a surviving spouse of a participating retiree, or surviving spouse of any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, and who had elected the optional dependent life benefit prior to his or her death, may continue the dependent life coverage for the surviving spouse and children that were covered as dependents on the date of deceased employee's death, provided the surviving spouse pays the full cost of such coverage and the surviving spouse and children were eligible dependents on the date of the deceased employee's death. Such election must be made within sixty [60] days after the date of the deceased employee's death and coverage must be continuous. The eligibility for life benefits shall terminate for the surviving spouse's children when the children cease to qualify as dependents under the provisions of this plan.

(1) Upon the death of the surviving spouse, life benefits granted under this paragraph are payable to the beneficiary designated by the surviving spouse.

(2) Upon the death of any covered dependent children under this paragraph, life benefits are payable to the surviving spouse.

(3) The amount of life insurance coverage elected by the surviving spouse or, if no spouse, the surviving eligible dependent children shall not exceed the amount elected by the deceased employee prior to the date of the employee's death.

(4) Coverage for all dependent children of the surviving spouse, if any, terminates simultaneously with the death of the surviving spouse or termination of the surviving spouse's life insurance coverage.

260:50-3-22. Mid-year benefit election changes

(a) Mid-year elections will be allowed in accordance with and under those circumstances stated within Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code. The determination of Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code compliance for the current employee will be through certification from the employer.

(b) EGID will accept any change for any current employee certified as being compliant by the employer of that current employee so long as the notification of change is received by EGID within thirty [30] days of the employee's mid-year plan election. The employer must further certify that the documentation supporting compliances is available to EGID and will be provided upon written request. An employer's cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in Title 26 Treasury Regulations 1.125-4. This is discretionary with the employer. Employees should be aware that Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code does not require a cafeteria plan to permit any of these changes.

(c) For all other members not on current employee status or whose employer does not operate his employee benefit plan under a Section 125 plan, the rules for mid-year changes will be subject to the Section 125 guidelines as detailed in Title 26 Treasury Regulations 1.125-4.

(d) In all cases, mid-year election changes will only be considered in the event of a qualifying status change as described within Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code and other federally required mandates. All other changes not in conjunction with a qualifying event can only be made during the annual Option Period.

260:50-3-25. Basic disclosure plan for HealthChoice Medicare beneficiaries

(a) The following words and terms as defined by EGID, when used in this section, shall have the following meaning: "Medicare beneficiary" means individuals eligible for HealthChoice Medicare plan coverage who are also entitled to Medicare benefits as designated by the United States Social Security Administration.

(b) In order to assure Medicare beneficiaries with an understanding of the medical and pharmacy benefits provided by, and the operation of, the HealthChoice Medicare plans; EGID shall maintain, adopt, and implement a basic disclosure plan for Medicare beneficiaries. This basic disclosure plan includes but is not limited to informational materials such as:

(1) A Medicare beneficiary benefits handbook providing a summary of medical and pharmacy benefits available under EGID's Medicare HealthChoice plan. Such handbooks shall be updated when material benefits or covered services change, or when reductions occur. A separate notification of material changes will be sent to all Medicare beneficiaries in a timely fashion prior to the updating of the Medicare beneficiary benefits handbook.

(2) A pre-enrollment package which shall be provided to all plan eligible Medicare beneficiaries. The pre-enrollment package shall, within a reasonable person's determination, be written in clear and understandable language providing the Medicare beneficiary detailed and necessary information upon which to make a selection of coverage for an upcoming plan year.

(3) A confirmation of benefit coverage form which will be distributed in a timely fashion after enrollment of a Medicare beneficiary, and by which HealthChoice shall notify the Medicare beneficiary of the plan coverage for the upcoming year.

(4) An explanation of benefit determination letter explaining the outcome of each medical or pharmacy claim processed for payment or denial. In the case of denial the explanation of benefit determination letter shall provide information of the appeals process available to the Medicare beneficiary.

(5) Material which provides all Medicare beneficiaries with basic disclosure information on special enrollment rights, medical child support orders, and any Medicare service or benefit that EGID by law has been directed to provide.

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 1. POLICY PROVISIONS

260:50-5-3. HealthChoice approval~~Approval~~ for emergency treatment by non-Network providers

Members may have benefits available for medical emergencies when non-Network services occur. Notification to EGID is required.

PART 3. ~~THE~~HEALTHCHOICE PLANS

260:50-5-10. Plan limits

EGID will adopt handbooks, policies and procedures for the implementation of the HealthChoice benefit plans. These documents shall clearly describe any limits associated with:

(1) Individual and family deductibles;

(2) Network and Non-Network out-of-pocket maximums; and

(3) Charges associated with Non-Network providers.

~~(a) **Deductible.** Covered members or dependents may be required to meet a calendar year deductible. Only covered charges will apply to the deductible.~~

~~(b) **Family deductible.** The family deductible is met when covered family medical expenses combined exceed the Plan's specified amount. No further deductible will be required from any covered participant for the remainder of the calendar year.~~

~~(c) **Network out-of-pocket maximum.** Per person and family calendar year out-of-pocket expenses are limited under HealthChoice to the percentage based on coinsurance and copayments. When the member or dependent exceeds the specified out-of-pocket calendar year maximum EGID will pay one hundred percent [100%] of the allowable fee for treatment provided by a Network provider. The one hundred percent [100%] payment of the allowable fee will be made by HealthChoice for the remainder of the calendar year. Network out-of-pocket maximum accumulations also apply to the non-Network out-of-pocket accumulations. The out-of-pocket maximum does not include charges for non-covered services and balance billing charges from non-Network providers.~~

~~(d) **Non-Network out-of-pocket.** The Plan will pay one hundred percent [100%] of the allowable fee for treatment provided by a non-Network provider, once the member or dependent exceeds the specified out-of-pocket calendar year threshold. The one hundred percent [100%] payment of the allowable fee will be made by the Plan for the remainder of the calendar year. Specific HealthChoice plans may apply non-Network out-of-pocket accumulations to the Network out-of-pocket maximums. Unlike Network providers, non-Network providers have no contractual obligation to limit members' financial responsibility after HealthChoice has paid the claim. HealthChoice processes claims based on limited allowable fees to Network and non-Network providers. Allowable fees are not the same as charges billed by providers.~~

~~Network providers have agreed with HealthChoice to write off the remainder of their fees after all payments from HealthChoice and the member's deductible, copay and coinsurance have been determined. However, non-Network providers have no write-off agreement with HealthChoice, which means the member remains responsible for paying all outstanding billed charges for treatment which have not been paid by HealthChoice. In most cases, this leaves the member responsible for paying a substantial out-of-pocket charges for treatment by the non-Network provider. The out-of-pocket maximum does not include charges for non-covered services, balance billing charges from non-Network providers and copays. Copayments apply to the Network out-of-pocket maximum.~~

~~(e) **Treatment by non-Network providers.** Any treatment at a non-Network provider will remain subject to the fee schedule or any other form of maximum claim payment limitation. Claims paid pursuant to the benefit administration procedures or guidelines as adopted by EGID at any non-Network hospital or provider are subject to the limited maximum allowable fee in every case, regardless of the reason why the member sought and received treatment at the non-Network provider, and will usually result in substantial out-of-pocket expenses to the insured. Exceptions allowed by Statute at 74 O.S. §1304(12) and (13) may be made, when appropriate.~~

260:50-5-11. Covered charges

Items which will be considered for payment under ~~the state's comprehensive health plan (HealthChoice)~~Health-Choice will be referred to as covered charges that are medically necessary. Specific criteria and limitations apply. Covered charges may include:

(1) Hospital services;
(2) Provider's services;
(3) Skilled Nurse facility expense;
(4) Skilled nurse care;
(5) Dentist's or oral surgeon's services;
(6) Oral surgery;
(7) Rehabilitative care;
(8) Outpatient expense; and
(9) Hospice care. ~~and are as follows:~~

~~(1) **Hospital services.** Charges made by a hospital for:~~
~~(A) Semi-private room and board;~~
~~(B) Other hospital services and supplies used for treatment;~~
~~(C) Charges for use of intensive care facility, coronary care facility and other special care facilities;~~
~~(D) Outpatient expense incurred within twenty-four [24] hours of a surgical operation or injury.~~

~~(2) **Provider's services.** Charges for the services of a duly qualified provider for:~~
~~(A) Performing a surgical procedure;~~
~~(B) In-hospital medical treatment by a provider other than the surgeon;~~
~~(C) Care and treatment of an illness;~~
~~(D) Approved preventive medical treatment.~~

~~(3) **Skilled Nurse facility expense.** Coverage for facility expenses applies only when the skilled nursing care to be provided is medically necessary as evidenced by a written statement from the attending provider and approved by the managed care vendor. The maximum number of days per benefit period shall be no greater than one hundred [100] days.~~

~~(4) **Skilled Nurse care.** Skilled Nurse care that is rendered in the home must be medically necessary as evidenced by a written order and treatment plan from the attending provider and approved by the Health Care Management Unit. Services must be provided by an agency that is Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF). The maximum number of visits per benefit period shall be according to the benefit administration procedures or guidelines as adopted by EGID.~~

~~(5) **Dentist's or oral surgeon's services.** Charges made by a duly qualified dentist or oral surgeon for treatment of fractures and dislocations of the jaw, and for cutting procedures and treatment covered under the oral surgery benefit. Dental services by Network providers shall be covered by HealthChoice for oral surgeries and related expenses which are covered medical benefits.~~

~~(6) **Oral surgery.** Reimbursement for oral surgeries for removal of exostosis, tumors, or cysts when medically necessary; for surgical correction of prognathism, retrognathism, hyperplasia, temporomandibular joint dysfunction, dysfunctional mandibular disorder. Hospital confinement and related ancillary services [including anesthesia] for dental surgery when the confinement is necessary for illness, severe disability, a minor eight [8] years of age or under, or other health conditions, even though the surgery itself may not be covered.~~

~~(7) **Rehabilitative care.** Charges for medical care that are considered primarily rehabilitative will be covered under the Plan. Out-of-hospital care must be prescribed by a provider and must begin within twelve [12] months after the onset of the condition being treated. Inpatient care must be rendered in a facility Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF). Both inpatient and outpatient care must be approved.~~

~~(8) **Outpatient expense.** This coverage includes services and supplies provided by the hospital or licensed surgical center, or any center duly licensed for performing certain other surgical procedures, within twenty-four [24] hours following and in connection with a surgical procedure. The limit for outpatient expense incurred for any one surgery is stated in the benefit administration procedures or guidelines as adopted by EGID.~~

~~(9) **Hospice care.** Professional services provided by personnel recognized by this Plan as practitioners of the~~

~~healing arts will be reimbursed according to the benefit administration procedures or guidelines as adopted by EGID. Specific criteria and limitations apply.~~

(10) **Approval of exceptional claims.**

(A) ~~The~~EGID's Health Care Management Unit may recommend exceptions to the benefits provided by ~~the plan~~HealthChoice for situations which would otherwise be denied or subject to limited coverage.

(B) Each request for exception must first be reviewed by the Health Care Management Unit on an individual basis. All responsibility for providing the documentation necessary to complete the review falls to the member. Recommendations will then be given to the Medical Director and Administrator both of whom must review all requested exceptions. Exceptions that have been reviewed but not approved in writing by the Medical Director and Administrator are deemed not approved. Approval of exceptions shall not establish precedent for other requests. All requests shall confirm that the requested exception is:

(i) medically necessary, and

(ii) within the standards of the community, and

(iii) cost effective, and/or

(iv) in compliance with all criteria as established by the Medical Director or designee.

(11) **Facility of benefit payment.** Whenever payments which should have been made under this plan in accordance with this section have been made under any other plans, EGID shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of this section, and amounts so paid shall be deemed to be benefits paid under this plan and, to the extent of such payments, EGID shall be fully discharged from liability under this plan.

(12) **Right of recovery.** Whenever payment has been made by EGID with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this section, EGID shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as EGID shall determine:

(A) any persons to or for or with respect to whom such payments were made;

(B) any other insurers; or

(C) service plans or any other organizations.

PART 5. HEALTHCHOICE LIFE BENEFITS

PART 7. LIMITATIONS AND EXCLUSIONS FOR HEALTHCHOICE LIFE PLAN

PART 9. HEALTHCHOICE DENTAL BENEFITS, LIMITATIONS, AND EXCLUSIONS

260:50-5-30. Scope of coverage~~; four classes of coverage~~

The dental expense benefit applies to eligible covered employees and dependents. This benefit provides payment for dental expenses incurred in excess of any applicable deductible. However, to elect this benefit, the member must either be a) enrolled in one of the group health plans offered through EGID or b) be enrolled in other group coverage. It is not necessary for dependents to be covered by health benefits to receive the benefits of this Plan.~~ Coverage under this Plan is divided into four classes which are: Class A, Class B, Class C, and Class D.~~

260:50-5-32. HealthChoice Dental limitations and exclusions

For the dental plans provided by EGID, there is no coverage for expenses incurred for or in connection with ~~any of the items listed below:~~conditions, services, procedures, treatments, expenses, items, and supplies excluded by EGID's benefit guidelines.

~~(1) Dental care and supplies for which there are no charges made or no payment would be required if the insured individual did not have coverage.~~

~~(2) Charges incurred after the covered individual's benefit ends.~~

~~(3) Dental care or supplies which are furnished in a facility operated under the direction of or at the expense of the U.S. Government [or its Agency] or by a provider employed by such a facility.~~

~~(4) Dental care or supplies to the extent that they are payable under other provisions of the policy.~~

~~(5) Charges for any dental services and supplies which are in excess of the fee schedule and deductible for such services and supplies.~~

~~(6) Adult orthodontic without a diagnosis of temporomandibular joint dysfunction.~~

~~(7) Cosmetic procedures.~~

~~(8) Medical expenses for the treatment of temporomandibular joint dysfunction.~~

~~(9) Medical services treating an oral condition.~~

~~(10) Dental care or supplies resulting from taking part in committing or attempting to commit an assault or felony.~~

~~(11) Dental care or supplies due to sickness or injury covered by Workers' Compensation, occupational disease law or similar laws.~~

~~(12) Dental care or supplies as a result of Act of War declared or undeclared, Insurrection, or release of nuclear energy.~~

~~(13) Expenses relating to an intentionally self-inflicted injury, except when the injury results from a physical or mental medical condition covered under the health plan.~~

~~(14) Charges for treatment of accidental injury to natural teeth or gums.~~

~~(15) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by EGID's benefit guidelines.~~

~~(16) Orthodontic benefits are only available to plan participants who have been enrolled in the HealthChoice dental plan for at least one year.~~

PART 11. HEALTHCHOICE MEDICARE SUPPLEMENT

PART 13. COORDINATION OF HEALTH AND DENTAL BENEFITS [REVOKED]

260:50-5-44. Application of retiree benefit allowance [REVOKED]

~~When calculating premium rates for the retired population, EGID shall first apply in whole or in part, benefit allowances funded by the retirement systems to offset costs projected for the pharmacy portion of the health insurance plan. Remaining amounts, if any, will then be applied toward the medical coverage premium.~~

260:50-5-45. Definitions [REVOKED]

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

~~**"Allowable expense"** means any medically necessary item of expense at least a portion of which is covered under at least one of the plans covering the person for whom the claim is made except where a statute requires a different definition. An expense or service, or a portion of an expense or service that is not covered by EGID's medical and or dental plan is not an allowable expense. The maximum liability under EGID's medical and or dental plan as a secondary or subordinate payer is the member's actual liability under any coordinating plan or EGID's standard benefit, whichever is less. However, items of expense under coverage such as, but not limited to dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense. When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be deemed to be an allowable expense, except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.~~

~~**"Plan"** means the following:~~

~~(A) "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by:~~

~~(i) group, blanket or franchise insurance coverage,~~

~~(ii) service plan contracts, group practice, individual practice and other prepayment coverage,~~

~~(iii) any coverage under labor management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and~~

~~(iv) any coverage under governmental programs, and any coverage required or provided by any statute.~~

~~(B) The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits and that portion which does not.~~

~~(C) Individually underwritten and issued contracts which provide a contractual right to renewal regardless of membership in or connection with any particular organization or group shall not be considered group type contracts, irrespective of the mode or channel of premium payment and regardless of any reduction in premium the covered person may receive by virtue of such method of premium collection.~~

~~(D) The definition of a "Plan" within the coordination of benefits provision of group contracts enumerates the types of coverage which the insurer may consider in determining whether other insurance exists with respect to a specific claim. Such definition:~~

~~(i) May not include individual or family policies, or individual or family subscriber contracts, except as provided in (ii) of this part and in (E) of this definition.~~

~~(ii) May include all group or group subscriber contracts as well as such group type contracts as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group type contracts answering this description may be included in the definition, at the option of the insurer and its policyholder client, whether or not individual policy forms are utilized and whether the group type coverage is designated as "franchise" or "blanket" or in some other fashion.~~

~~(E) The definition of "Plan" may include both group and individual automobile "no fault" contracts but, as to the traditional automobile "fault" contracts, only the medical benefits written on a group or group type basis may be included.~~

~~(F) Interpretation of the definition of a "Plan" may not include group or group type hospital indemnity benefits (written on a non-expense incurred basis) of thirty dollars [$30] per day or less unless they are characterized as reimbursement type benefits but are designed to administer so as to give the insured the right to elect indemnity type benefits, in lieu of such reimbursement type benefits at the time of the claim.~~

~~In any event, the amount of group and group-type hospital indemnity benefits which exceed thirty dollars [$30] per day may be construed as being included under the definition of "Plan".~~

~~(G) School accident type coverages, written on either an individual, blanket, group or franchise basis should not be taken into consideration in coordination of benefits. In this context, school accident type coverages are defined to mean coverage covering grammar school, middle school, and high school students for accidents only, including athletic injuries, either on a twenty-four [24] hour basis or "to and from school" for which the parent pays the entire premium.~~

~~(H) If "Medicare" or similar governmental benefits are included in the definition of "Plan", such benefits may be taken into consideration without expanding any of the definitions of this provision beyond the hospital, medical, and surgical benefits which may be provided by the governmental program.~~

~~(I) A plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:~~

~~(i) another plan exists; or~~

~~(ii) except with respect to Part B of Medicare, that the claimant is or could have been covered under another plan; or~~

~~(iii) the claimant has elected an option under another plan providing a lower level of benefits than another option for which the claimant was eligible.~~

~~(J) With regard to plans offered by EGID an eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and EGID reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent.~~

~~**"This Plan"** means that portion of the benefits that are subject to this part.~~

260:50-5-46. Effect on benefits [REVOKED]

~~(a) **Determining benefits.** This section shall apply in determining the benefits as to a person covered under the plan for any claim determination period if, for the allowable expense incurred as to such person during such period, the sum of:~~

~~(1) the benefits that would be payable under this plan in the absence of this provision, and~~

~~(2) the benefits that would be payable under all other plans in the absence therein of provisions of similar purpose to this provision would exceed such allowable expenses.~~

~~(b) **Claim determination period.** As to any claim determination with respect to which this section is applicable, the benefits that would be payable under this plan in the absence of this provision for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other plans, except as provided in (c) of this section, shall not exceed the total of such allowable expenses. Benefits payable under another plan include the benefits that would have been payable had claim been duly made therefore.~~

~~(c) **Coordination of benefits.** The benefits of another plan will be ignored for the purpose of determining the benefits under this plan if:~~

~~(1) the other plan which is involved in (b) of this section and which contains a provision coordinating its benefits with those of this plan would, according to its rules, determine its benefits after the benefits of this plan have been determined, and~~

~~(2) the rules are set forth in (d) of this section would require this plan to determine its benefits before such other plan.~~

~~(d) **Order of benefit determination.** For the purpose of (c) of this section, the rules establishing the order of benefit determination are:~~

~~(1) The benefits of a plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a plan which covers such person as a dependent.~~

~~(2) The following guidelines apply with respect to claims regarding dependent children:~~

~~(A) Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on which expenses claim is based as a dependent of a person whose date of birth, excluding year of birth, occurs earlier in a calendar year, shall be determined before the benefit of a plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either plan does not have the provisions of this paragraph regarding dependents, which results either in each plan determining benefits before the other or in each plan determining its benefits after the other, the provisions of this paragraph shall not apply, and the rule set forth in the plan which does not have the provisions of this paragraph shall determine the order of benefits.~~

~~(B) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.~~

~~(C) In the case of a person for whom claim is made as a dependent child whose parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers that child as a dependent of the stepparent, and the benefits of a plan which covers that child as a dependent of the stepparent will~~

~~be determined before the benefits of a plan which covers that child as a dependent of the parents without custody.~~

~~(D) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced, where there is a court decree which would otherwise establish financial responsibility for the medical, dental or other health care expenses with respect to the child, then, notwithstanding (B) and (C) of this paragraph, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other plan which covers the child as a dependent child.~~

~~(3) When (1) and (2) of this subsection do not establish an order of benefit determination, the benefits of a plan which has covered the person on whose expenses claim is based for the longer period of time shall be determined before the benefits of a plan which has covered such person the shorter period of time, provided that:~~

~~(A) the benefits of a plan covering the person on whose expenses claim is based as a laid off or retired employee, or dependent of such person, shall be determined after the benefits of any other plan covering such person as an employee, other than a laid off or retired employee, or dependent of such person; and~~

~~(B) if either plan does not have a provision regarding laid off or retired employees, which results in each plan determining its benefits after the other, then the provisions of (A) above shall not apply.~~

~~(4) When a claim under a plan with a coordination of benefits provision involves another plan which also has a coordination of benefits provision, the carriers involved should use the rules in (1) through (3) of this subsection to decide the order in which the benefits payable under the respective plans will be determined. Note:~~

~~(A) In determining the length of time an individual has been covered under a given Plan, two successive plans of a given group shall be deemed to be one continuous plan so long as the claimant concerned was eligible for coverage within twenty four [24] hours after the prior plan terminated. Thus, neither a change in the amount of scope of benefits provided by a plan, a change in the carrier insuring the plan, nor a change from one type of plan to another, (e.g. single employer to multiple employer plan, or vice versa, or single employer to a Taft Hartley Welfare Plan) would constitute the start of a new plan for purposes of this paragraph.~~

~~(B) If a claimant's effective date of coverage under a given plan is subsequent to the date the carrier first contracted to provide the plan for the group concerned (employer, union, association, etc.), then, the absence of specific information to the contrary, the carrier shall assume, for purposes of this paragraph, that the claimant's length of time covered under that plan shall be measured from claimant's effective date of coverage. If a claimant's effective date of coverage under a given plan is the same as the date the carrier first contracted to provide the plan for the group coverage, then the carrier shall request the group concerned to furnish the date the claimant first became covered under the earliest of any prior plans the group may have had. If such date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time his coverage under that plan has been in force.~~

~~(5) A plan with order of benefit determination rules which complies with this section (herein called a Complying Plan) may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this section (herein called a Noncompliance Plan) on the following basis:~~

~~(A) If the Complying Plan is the Primary Plan, it shall pay or provide its benefits on a primary basis.~~

~~(B) If the Complying Plan is the Secondary Plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the Complying Plan were the Secondary plan. In such a situation, such payment shall be the limit of the Complying Plan's liability.~~

~~(C) If the Noncompliance Plan does not provide the information needed by the Complying Plan to determine its benefits within a reasonable time after it is requested to do so, the Complying Plan shall assume that the benefits of the Noncompliance Plan are identical to its own, and shall pay its benefits accordingly. However, the Complying Plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the Noncompliance Plan.~~

260:50-5-47. Facility of benefit payment [REVOKED]

~~Whenever payments which should have been made under this plan in accordance with this section have been made under any other plans, EGID shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of this section, and amounts so paid shall be deemed to be benefits paid under this plan and, to the extent of such payments, EGID shall be fully discharged from liability under this plan.~~

AGENCY NOTE: *260:50-5-47 has moved to 260:50-5-11(11).*

260:50-5-48. Right of recovery [REVOKED]

~~Whenever payment has been made by EGID with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this section, EGID shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as EGID shall determine:~~

~~(1) any persons to or for or with respect to whom such payments were made;~~

~~(2) any other insurers; or~~
~~(3) service plans or any other organizations.~~

AGENCY NOTE: *260:50-5-48 has moved to 260:50-5-11(12).*

PART 15. HEALTHCHOICE SUBROGATION

[OAR Docket #19-646; filed 6-21-19]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 55. EMPLOYEES GROUP INSURANCE DIVISION - ~~THE~~HEALTHCHOICE DISABILITY PLAN

[OAR Docket #19-647]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:55-1-1. Purpose [AMENDED]
AUTHORITY:
74 O.S. §1332; The State and Education Employees Group Insurance Board; The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. §34.6(8).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 20, 2018
COMMENT PERIOD:
December 17, 2018 through January 23, 2019
PUBLIC HEARING:
January 23, 2019
ADOPTION:
March 7, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 8, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE DATE:
January 1, 2020
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.
CONTACT PERSON:
Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2020:

260:55-1-1. Purpose

The rules of this chapter outline the coverage and limitations available under the HealthChoice Disability plan.

[OAR Docket #19-647; filed 6-21-19]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 115. PROCUREMENT

[OAR Docket #19-644]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
260:115-1-2. Definitions [AMENDED]
Subchapter 3. Supplier Provisions
260:115-3-3. Supplier registration [AMENDED]
260:115-3-7. Bid preparation [AMENDED]
260:115-3-9. Bid documents open for public inspection [AMENDED]
260:115-3-11. Bid submission [AMENDED]
260:115-3-19. Supplier's Protest [AMENDED]
260:115-3-21. Supplier suspension from Supplier List [AMENDED]
260:115-3-23. Supplier debarment [AMENDED]
Subchapter 5. State Agency Provisions
260:115-5-3. Certified Procurement Officers (CPO) [AMENDED]
260:115-5-7. State agency purchasing procedures [AMENDED]
260:115-5-9. Retention of state agency acquisition records [AMENDED]
260:115-5-11. State agency acquisitions [AMENDED]
260:115-5-13. Authorized signatures for state agency procurement [AMENDED]
260:115-5-15. Agency savings reporting [AMENDED]
260:115-5-21. Procedures for state agency privatization contracts [AMENDED]
Subchapter 7. Procurement
Part 1. General Procurement
260:115-7-3. Methods state agencies use to make acquisitions [AMENDED]
Part 3. Requirements for Acquisitions
260:115-7-15. Acquisitions over $25,000.00 and not exceeding $50,000.00 [AMENDED]
260:115-7-19. Emergency acquisitions [AMENDED]
Part 5. Competitive Sealed Solicitations
260:115-7-30. Competitive sealed solicitations [AMENDED]
AUTHORITY:
74 O.S. §85.1 Central Purchasing Act and 62 O.S. §34.6; the Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 20, 2018
COMMENT PERIOD:
December 17, 2018 through January 18, 2019
PUBLIC HEARING:
January 18, 2019
ADOPTION:
March 7, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 8, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:

The purpose of this rulemaking action is to amend and update language in the rules for state travel.

CONTACT PERSON:

Tim Tuck, Deputy General Counsel, OMES, (405) 521-2403 or tim.tuck@omes.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

260:115-1-2. Definitions

In addition to terms defined in 74 O.S., §85.2, the following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Acquisition authority" means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

"Addendum" means a written modification to a contract.

"All or none bid" means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.

"All or none solicitation" "performance bond" means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

"Alteration" means a modification a bidder makes to a solicitation response prior to the response due date.

"Alternate bid" or **"alternative bid"** means a bid or proposal, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

"Amendment" means a written change, addition, correction, or revision to a solicitation made by the state agency responsible for making the acquisition.

"Authorized signature" means a manual, electronic or digital signature or other identifier uniquely linked to a person authorized to sign documents the supplier submits to the State Purchasing Director.

"Best and Final Offer" or **"BAFO"** means a final offer submitted in writing by a bidder based on the outcome of negotiations.

"Bid bond", or **"surety"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

"Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. [74 O.S. §85.2] When used in this Chapter, bidder is synonymous with a "supplier" or "vendor" responding to a solicitation.

"Business days" means Monday through Friday and is exclusive of weekends and Oklahoma state holidays.

"Central Purchasing Division" means the Central Purchasing Division of the Office of Management and Enterprise Services.

"Certified Procurement Officer" or **"CPO"** means a state agency procurement official certified as a procurement officer or analyst by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Chief Information Officer" means the chief administrative officer of the Information Services Division of the Office of Management and Enterprise Services.

"Clarification" means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

"Closing date/time" means the date and Central Time a solicitation specifies responses are due.

"Commodity classification" means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

"Competitive solicitation" means a process for acquiring goods or services wherein bidders submit bids to the Central Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The competitive solicitation process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirements of applicable statutes and rules are met.

"Days" means calendar days unless otherwise specified.

"Debar" or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the Supplier List, bidding, offering to bid, receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Office of Management and Enterprise Services awards or administers and may also result in cancellation of existing contracts with the State of Oklahoma.

"Director" or **"OMES Director"** means the Director of the Office of Management and Enterprise Services or his designee.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

"Emergency acquisition" means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to place human life or safety in imminent danger or threaten significant property interests with imminent destruction; or, is a condition certified by the Governor as a serious environmental situation. [Reference 74 O.S. §85.7]

"Firm bid" means an offer by a bidder which contains no conditions which may prevent acceptance and which, by

its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Forms" means documents the OMES Director prescribes and requires suppliers and state agencies to use to provide information to OMES.

"Indefinite quantity contract" means a contract the State Purchasing Director, CIO, or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount.

"Information Services Division" means the Information Services Division of the Office of Management and Enterprise Services.

"Information technology" or **"IT"** means any electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including audio, graphic, and text. [62 O.S. §34.29]

"Invitation to bid" or **"ITB"** means a type of solicitation a state agency or the State Purchasing Director sends to suppliers to request submission of bids by suppliers for acquisitions.

"Invoice" means to a proper invoice as defined by the State Comptroller.

"Material deficiency" or **"material deviation"** means a supplier's failure to provide information necessary to evaluate a solicitation.

"Minor deficiency" or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

"Multi-award" means the award of a contract to two or more suppliers to furnish an indefinite quantity or category of item, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service or product compatibility.

"Non-collusion certification" means a certification submitted by a supplier with any competitive bid or contract executed by the state for goods or services in accordance with 74 O.S. §85.22.

"Non-responsive" means a bid or proposal that has been determined not to conform to essential requirements of a solicitation.

"Oklahoma Central Purchasing Act" means 74 O.S. §§85.1 et seq.

"Oklahoma Correctional Industries" or **"OCI"** means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

"Oklahoma Information Technology Accessibility Standards" or **"IT Accessibility Standards"** means the accessibility standards adopted by the Office of Management and Enterprise Services, to address all technical standard categories of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220, August 7, 1998) to be used by each state agency in the procurement of information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

"Office of Management and Enterprise Services" or **"Office"** or **"OMES"** means the Oklahoma Office of Management and Enterprise Services.

"Online Bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. The term also means all functions that pertain to the obtaining of any goods or services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Ratification of an unauthorized commitment" means the act of approving an unauthorized commitment made by a state agency and the written agreement documenting the approval.

"Reciprocity" means a preference, which the State Purchasing Director or state agency shall apply against the price submitted for an acquisition by an out-of-state bidder whose home state applies a similar preference against Oklahoma bidders.

"Registered supplier" means a supplier that registers with the Central Purchasing Division pursuant to 74 O.S. §85.33.

"Remedy" means to cure, alter, correct or change.

"Request for information" or **"RFI"** means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.

"Request for proposal" or **"RFP"** means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.

"Request for quotation" or **"RFQ"** means a simplified written or oral solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of a quote for acquisitions.

"Requisition number" means an identifier the state agency or OMES assigns to a requisition.

"Requisitioning unit" means the unit in a state agency responsible for making acquisitions.

"Responsible supplier" means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract that may include, but may not be limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, and performance history which will ensure good faith performance.

"Responsive" means a bid or proposal that has been determined to conform to the essential requirements of a solicitation.

"Reverse Auctioning" means a procurement method wherein pre-qualified bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' price positions are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation.

"Scheduled acquisition" means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

"State official" means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

"State Purchasing Director" means the director of the Central Purchasing Division of the Office of Management and Enterprise Services appointed by the OMES Director; and, includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority. [74O.S. §85.2] Unless otherwise stated, the term includes employees of the Central Purchasing Division and state agency purchasing officials certified by the State Purchasing Director to which the State Purchasing Director has lawfully delegated authority to act on his or her behalf. In regards to the procurement of information technology or telecommunications, the term means the Chief Information Officer of the Office of Management and Enterprise Services.

"State Use Committee" means the statutory Committee that certifies severely disabled individuals and sheltered workshops as qualified organizations to contract with the state to provide products and services, which are designated in the State Use Committee procurement schedule for state agency acquisitions pursuant to 74 O.S. §§ 3001 et seq.

"Statement of Work" means a detailed description of the work which a state agency requires a contractor or supplier to perform or accomplish.

"Supplier" or **"vendor"** means an individual or business entity that sells or desires to sell acquisitions to state agencies [74 O.S. §85.2].

"Supplier performance evaluation" means information a state agency or OMES Procurement provides to the State Purchasing Director, in a manner the OMES Director prescribes, that documents the quality of service or products provided by a supplier.

"Supplier registration" means a process a supplier uses to register with the Central Purchasing Division to automatically receive solicitations based on a commodity class for a specified period of time.

"Supplier List" means a list of individuals or business entities that have registered with the Central Purchasing Division in order to receive notification of solicitations for commodities specified in their registration application.

"Suspension" means an action by the State Purchasing Director to suspend a supplier's authority to be included on the Supplier List, be eligible to submit bids to state agencies and be awarded a contract by a state agency subject to the Central Purchasing Act.

"Utility service" or **"utilities"** means a public service furnishing electricity, natural gas, water, or sewage.

SUBCHAPTER 3. SUPPLIER PROVISIONS

260:115-3-3. Supplier registration

(a) **Purpose.** Unless otherwise specified, supplier registration pursuant to this section provides a supplier with automatic notification of bid opportunities but is not required for a supplier to respond to a solicitation. Automatic notification is dependent upon a supplier providing the Office of Management and Enterprise Services valid and up-to-date information. Supplier registration is required for any supplier selected for award or renewal of a contract pursuant to the Central Purchasing Act and these rules. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(1) Suppliers may be required to prequalify for the purpose of responding to online solicitations.

(2) Suppliers shall prequalify in accordance with procedures established by the State Purchasing Director.

(b) **Registration.** A supplier may apply for registration online as established by 74 O.S. 85.33, for each commodity class listed in the registration application, to be placed on the Supplier List for a one-year period. Registered suppliers are to be notified by the Central Purchasing Division or by non-exempt state agencies pursuant to applicable laws and rules, of solicitations for each commodity class for which a supplier registers. The State Purchasing Director shall not place a supplier on the Supplier List if the supplier provides incomplete registration information or if the State Purchasing Director, in his or her sole discretion, determines the supplier is not a responsible supplier.

(c) **Registration fee.** A registered supplier may renew a registration prior to the expiration date of the supplier's current registration in order to remain on the Supplier List. The Office of Management and Enterprise Services shall not refund supplier registration fees.

(d) **Voluntary removal from Supplier List.** A supplier may submit a written request to the Central Purchasing Division to request to be removed from the Supplier List for a commodity.

260:115-3-7. Bid preparation

(a) **Form requirements.** The bidder shall complete and submit all required forms as specified by the solicitation.

(1) Information the bidder submits shall be legibly hand written, typewritten, printed or electronically conveyed.

(2) Should the bidder alter the form or bid information, the bidder shall initial each alteration.

(3) Any form requiring a bidder's signature submitted to the OMES shall have an authorized signature.

(4) If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner specified by the laws of the bidder's state.

(b) **Firm bid for ~~sixty (60) days~~one hundred twenty (120) days.** A bidder's bid shall be considered a firm bid for ~~sixty (60)~~one hundred twenty (120) days following the bid closing date, unless otherwise stated in the solicitation.

(c) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. Unless otherwise provided by law, a state agency shall not pay travel expenses not specified by the successful solicitation response.

(d) **Tax exemptions.** State agency acquisitions are exempt from sales taxes and federal excise taxes. Purchases made by suppliers on behalf of a state agency are not exempt from sales or federal taxes unless otherwise authorized by law.

(e) **Payment terms.** Suppliers are paid by state agencies pursuant to 62 O.S. §34.71. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of a valid and proper invoice. Early payment discounts may be negotiated and awarded unless prohibited by federal or state law.

(f) **Used or new products.** A bidder shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.

(g) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.

(h) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall be a complete bid. The bidder shall clearly identify an alternate bid. If the bidder submits more than one alternate bid, the bidder shall number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.

(i) **All or none bid.**

(1) Award to more than one bidder. If the solicitation specifies that the State Purchasing Director may award a contract to more than one bidder, a bidder may indicate on the bid that terms and conditions of the bid are all or none.

(2) Award by item. If the solicitation indicates that the State Purchasing Director may award the bid to more than one bidder by item, a bidder may indicate that the terms and conditions of the bid are all or none.

(j) **Bidder delivery.** If the solicitation does not specify a delivery date for goods and/or services, the bidder shall specify the delivery date in the bid.

(k) **Sample submission.** A solicitation may specify submission of samples of the required items or products when essential to the assessment of product quality during bid evaluation. When required, samples must be received no later than the date and time specified by the solicitation.

(1) **Sample identification.** The bidder shall clearly identify the sample the bidder submits by placing the bidder's name, bidder's address, requisition number and closing date/time on both the sample container and on the sample shipping container.

(2) **Sample costs.** The bidder shall pay costs for the sample and submission to the State.

(3) **Sample requirements.** A bidder shall submit a sample that represents the quality of the whole.

(4) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used. All samples submitted may be subject to consumption or destruction as a result of tests by the agency.

(5) **Sample tests costs.** If the sample a bidder submits fails to meet the specification or standards the solicitation requires, the bidder may be required to pay testing costs the acquiring state agency incurs.

(6) **Return of sample to bidder.** If return of samples is stipulated in a bidder's solicitation response, samples not destroyed by testing may be returned at the bidder's expense.

(7) **Successful bidder samples.** The State Purchasing Director may retain samples submitted by the successful bidder to ensure the products or items delivered meet specifications in the solicitation.

(l) **Proof of insurance.** The ~~successful~~responding bidder shall provide proof of all insurance required by the solicitation prior to contract award. A supplier who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

(m) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the bidder shall provide the information in the bid.

260:115-3-9. Bid documents open for public inspection

(a) Documents a bidder submits in a response to a solicitation are public records and shall be available for review, upon request, only after a supplier is selected and the contract is awarded. An electronic quote, bid or proposal submitted through an online solicitation process is subject to the same public disclosure laws. Such requests must comply with the Oklahoma Open Records Act, 51 O.S. § 24A.1. et seq.

(b) If the bidder submits information in a response to a solicitation that the bidder considers confidential or proprietary, the bidder shall:

(1) specifically identify what information is confidential or proprietary upon each page containing confidential or proprietary information;

(2) enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public; and

(3) conspicuously mark on the outside of the bid packet to indicate it contains confidential information.

(4) submit all such documents, materials, and information under separate cover. Failure to comply with this requirement may result in the State Purchasing Director's decision to not consider bidder's confidential or proprietary claim.

(c) The State Purchasing Director shall review the information and may or may not designate a bidder's financial information or proprietary information as confidential and may or may not reject all requests to disclose the information so designated. [Reference 74 O.S. § 85.10]

260:115-3-11. Bid submission

(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete address of the bidder, solicitation number and closing date shall be prominently displayed on each item submitted as specified in the solicitation.

(c) **Submission of non-collusion certification.** The certification shall have an authorized signature certifying the non-collusion statement.

(d) **Bid receipt.** Upon receipt, the acquiring state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(e) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time unless the State Purchasing Director has authorized acceptance of bids due to a significant error or incident that occurred which affected the receipt of a bid. Electronic bids solicited by online bidding may be accepted after the closing date and time only if the State Purchasing Director has authorized acceptance of bids due to a significant error or ~~event~~ incident that occurred which affected the electronic receipt of an online bid. Unless opened for identification, bids received late will be returned unopened in a timely manner.

260:115-3-19. Supplier's Protest

(a) A supplier may protest a contract award by a state agency or OMES to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.

(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or OMES within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons in specificity for protest.

(2) **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents.

(A) The State Purchasing Director may determine to respond to the protest or delegate the responsibility by written notice to the state agency that awarded the contract.

(B) The State Purchasing Director or state agency, whichever is applicable, shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.

(3) **Supplier appeal of decision to deny protest.** The supplier may appeal a denial of protest by the State Purchasing Director or a state agency to the OMES Director.

(A) Such appeal shall be filed by the supplier within ten (10) business days of the date of the State Purchasing Director's or state agency's notice of denial pursuant to 75 O.S. §§309 et seq.

(B) The OMES Director may enter an order staying contract performance upon such terms and conditions as the OMES Director determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced to the OMES Director. The OMES Director shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.

(4) **Director actions and determination.** The OMES director may hear the appeal or assign the supplier's appeal to an Administrative Law Judge retained by the agency.

(A) If the appeal is assigned to an Administrative Law Judge, the Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the OMES Director.

(B) If the appeal is heard by the OMES Director, the OMES Director shall have all powers granted by law including all powers delegated to the Administrative Law Judge by this section.

(C) The OMES Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.

(D) The cost of actions necessary to process a supplier's appeal, together with any other expenses incurred due to the appeal, shall be paid by the state agency responsible for the initial solicitation.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [Reference 75 O.S. §§250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.

(B) **Burden of proof.** The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the supplier protesting the contract award, OMES, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. §§ 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(i) Establish a scheduling order;

(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(iii) Rule on all interlocutory motions;

(iv) Require briefing of any or all issues;

(v) Conduct hearings;

(vi) Rule on the admissibility of all evidence;

(vii) Question witnesses; and

(viii) Make proposed findings of facts and conclusions of law to the OMES Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the OMES Director deny the supplier's appeal or that the contract award be cancelled and rebid.

(6) **Supplier appeal of OMES Director decision to deny appeal.** If the OMES Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S. §§ 309 et seq.

(b) An agency making an acquisition pursuant to 74 O.S. §85.5(T) shall conduct all actions and bear all costs associated with the protest or appeal of a contract award.

260:115-3-21. Supplier suspension from Supplier List

(a) **Cause for suspension.** The State Purchasing Director may suspend a supplier in accordance with this section. The State Purchasing Director may serve upon the supplier a notice to show cause why the supplier should not be suspended. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority. The suspension shall be for a period of time not to exceed one (1) year for any of the following reasons:

(1) a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required by a solicitation;

(2) a supplier fails to perform pursuant to the contract;

(3) a supplier provides acquisitions that fail to meet the requirements of the contract;

(4) a supplier fails to deliver an acquisition pursuant to the contract;

(5) a supplier fails to timely replace at the supplier's expense acquisitions that fail to meet the requirements of the contract or that have latent defects;

(6) a supplier provides the State Purchasing Director with false, misleading, inaccurate, materially deficient or incomplete information on a bidder registration form;

(7) a supplier fails to keep a bid firm for the period specified in the solicitation after the solicitation closing date;

(8) a supplier fails to resolve a dispute with a state agency;

(9) upon the final decision by the appropriate regulatory authority or court of competent jurisdiction that a supplier engaged in discriminatory practices;

(10) a supplier misrepresents, fails to provide, or allows to expire a professional certification required by the solicitation;

(11) a supplier colludes with other suppliers to restrain competitive bidding;

(12) a supplier provides a state employee with a kickback;

(13) the State Purchasing Director determines, in his or her sole discretion, that a supplier is no longer responsible or qualified to do business with the State of Oklahoma;

(14) a supplier violates any provision of the Oklahoma Central Purchasing Act;

(15) any other reason the State Purchasing Director determines appropriate.

(b) **Suspension notice.** The State Purchasing Director shall send written notice of suspension to a supplier within five (5) business days of the State Purchasing Director's determination. The notice shall include the suspension period, which shall begin three (3) business days from the date of the notice and shall expire no later than the end of the period specified in the order.

(c) **Supplier's suspension appeal.** A supplier may appeal a suspension in writing to the State Purchasing Director within five (5) business days of receipt of the suspension notice.

(d) **Supplier suspension appeal.** If a supplier appeals suspension by the State Purchasing Director, the State Purchasing Director shall affirm or deny the appeal in writing to the supplier.

(1) If the State Purchasing Director affirms the supplier's appeal, the State Purchasing Director shall reinstate the supplier to the Supplier List.

(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the OMES Director pursuant to 75 O.S. §§ 309 et seq. and the provisions of 260:115-3- 19.

(e) **Suspension.** The suspension period shall begin on the date appearing on the notice of final order of suspension and shall expire no later than the end of the term specified in the order.

(f) **Supplier request for reinstatement.** A suspended supplier may request reinstatement from the State Purchasing Director prior to the end of the supplier's suspension period. The State Purchasing Director may consider reinstating the supplier upon submission by the supplier of documents that indicate a change of conditions.

(g) **Supplier reinstatement.** If the State Purchasing Director reasonably believes that the supplier demonstrates the ability to satisfy requirements for performance of state contracts, the State Purchasing Director shall send written notice of reinstatement to the supplier.

260:115-3-23. Supplier debarment

(a) **Cause for debarment.** The State Purchasing Director may debar a supplier and revoke the supplier's authority to be included on the Supplier List, to be eligible to submit bids to state agencies, to be awarded a contract by a state agency subject to the Central Purchasing Act and cancel any existing contracts with the State of Oklahoma. The State Purchasing Director may serve upon the supplier a notice to show cause why the supplier should not be debarred. For the purposes of this section, "State Purchasing Director" does not include employees of state agencies to whom the State Purchasing Director has delegated authority. The debarment shall be for a period of no more than three (3) years. Debarment shall be for any of the following reasons:

(1) conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption;

(2) conviction of an individual or business entity of a misdemeanor involving a gift, donation or gratuity an individual or business entity gives to an official of the Office of Management and Enterprise Services, an immediate family member of an official of the Office of Management and Enterprise Services, or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority;

(3) conviction of an individual or business entity of a felony involving the Anti-Kickback Act of 1974; or,

(4) debarment by federal government entities.

(b) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.

(1) **Disassociation.** The efforts, if any, of the individual or business entity, to disassociate itself from individuals and business entities responsible for convictions.

(2) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.

(3) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.

(4) **Time period.** The period of time during which the acts leading to conviction of the individual or business entity occur.

(5) **Failure to respond to inquiries.** Failure of the individual or business entity to respond to inquiries by the State Purchasing Director regarding factors that may lead to debarment.

(6) **Other factors.** Any other factors regarding the individual or business entity the State Purchasing Director determines appropriate.

(c) **State Purchasing Director options.** Upon review and consideration of factors relevant to the proposed debarment of an individual or business entity, the State Purchasing Director shall take one of the following actions:

(1) **Decline to debar.** Decline to debar an individual or business entity;

(2) **Suspension.** Suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate;

(3) **Debarment.** Debar an individual, a business entity, or both for a period that shall begin three (3) business days from the date of the final order of debarment and expire no later than the end of the period specified in the order.

(d) **Debarment notice.** If the State Purchasing Director debars an individual or business entity, the State Purchasing Director shall notify the individual or business entity in writing.

(e) **Reinstatement after debarment.** A debarred individual or business entity may submit a written request for reinstatement to the State Purchasing Director. The State Purchasing Director shall consider information the individual or business entity provides to determine if the individual or business entity merits reinstatement. The State Purchasing Director shall provide written notice of the reinstatement approval or denial.

(f) **Supplier appeal of State Purchasing Director's action.** A supplier may appeal a debarment or a denial of reinstatement by the State Purchasing Director to the OMES Director within ten (10) business days of the date of the final order of debarment or the denial of reinstatement notice pursuant to 75 O.S. §§309 et seq and the provisions of 260:115-3-19.

SUBCHAPTER 5. STATE AGENCY PROVISIONS

260:115-5-3. Certified Procurement Officers (CPO)

(a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to 74 O.S. §85.5. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(b) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.

(c) **Authority.** A CPO shall be authorized to make acquisitions for state agencies.

(d) **Duties.** A CPO shall provide assistance and oversight to a state agency to ensure acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, the Central Purchasing rules, other statutory provisions and the state agency's internal purchasing procedures.

(e) **Decertification.** The State Purchasing Director may revoke certification of a CPO if the State Purchasing Director reasonably believes the CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act,

the Central Purchasing rules, other statutory provisions, or the state agency's internal purchasing procedures.

(f) **Continuing education.** To maintain certification, a CPO shall attend continuing education as required by the CPO Procurement Training Program established by the State Purchasing Director. Continuing education courses must be related to procurement practices and approved in advance for CPO education credit by the State Purchasing Director. The State Purchasing Director shall establish a policy relating to how often courses may be repeated to qualify for continuing education credit.

(1) A CPO shall submit documentation verifying continuing education course attendance to the State Purchasing Director as required by the CPO Procurement Training Program. The burden of proof rests solely upon the CPO to demonstrate, in advance of taking a course and to the satisfaction of the State Purchasing Director, that all continuing education courses reported meet all of the requirements as to content and subject matter related to procurement practices.

(2) A CPO may claim continuing education credit only for the compliance period in which the course was completed and credit granted.

(3) Failure by a CPO to complete required continuing education within the allowed time period will result in suspension of the CPO's purchasing authority.

(4) A suspended CPO must repeat the CPO certification course and demonstrate proficiency in procurement practices by passing the CPO prescribed certification examination in order to be reinstated and restore purchasing authority.

(5) In the event of extenuating circumstances, a CPO may submit a written request to the State Purchasing Director for reinstatement and an extension of time to allow the CPO to fulfill required continuing education credits. The State Purchasing Director may approve the request for a reinstatement period not to exceed three (3) months to provide time to fulfill education credits.

(g) **Change in status.** A CPO or the state agency employing such CPO shall immediately notify the State Purchasing Director when they:

(1) are no longer performing as a CPO;

(2) transfer to another state agency; or,

(3) terminate their employment with the state.

260:115-5-7. State agency purchasing procedures

(a) **Development.** State agencies shall develop internal purchasing procedures for acquisitions by the state agency pursuant to 74 O.S. §85.39, ". . .which shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations". A state agency must ~~state~~include the method whereby a supplier may protest a contract award by the agency pursuant to 260:115-3-19 in its internal purchasing procedures, and include provisions for procurement policies under statutorily applicable emergency events. Internal purchasing procedures are not effective until approved in accordance with this section.

(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(c) **State Purchasing Director review.** The State Purchasing Director shall review the state agency's procedures to ensure compliance with provisions of the Oklahoma Central Purchasing Act, provisions of the State Use Committee, and the Central Purchasing rules.

(d) **OMES Director notice of approval or denial to state agency.** Within fifteen (15) business days of submission, the OMES Director shall notify the state agency if the procedures comply or indicate revisions necessary to bring the procedures into compliance.

(e) **State agency resubmission following disapproval.** The state agency shall resubmit procedures until the OMES Director notifies the state agency the procedures comply.

(f) **Purchasing procedure review.** State agency internal purchasing procedures should be reviewed by the state agency annually with recertification of the internal purchasing procedures by submission to the State Purchasing Director every two (2) years.

(~~f~~g) **Purchasing procedure amendments.** If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the new procedures in their entirety to the State Purchasing Director for review pursuant to the provisions of these rules.

(~~g~~h) **State agency Purchase Card (P/Card) procedures.** A state agency shall amend its internal purchasing procedures to include the agency's Purchase Card (P/Card) procedures within six (6) months of completing the P/Card Program implementation process through OMES. The P/Card procedures shall include provisions for procurement policies under statutorily applicable emergency events and the state agency's approved food policy. The P/Card procedures must specify the process established by the agency to ensure a P/Card held by a terminated or separated employee or an employee who no longer has a job function requiring a P/Card, is promptly surrendered to the State Agency P/Card Administrator.

260:115-5-9. Retention of state agency acquisition records

(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts as follows:

(1) **Acquisitions independently processed by agency.** Retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are

resolved or until the end of the seven (7) year retention period, whichever is later; and,

(2) **Acquisition documents submitted to Central Purchasing Division for processing.** Retain documents until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no legal actions are pending, then destroy. If legal action is pending destroy two (2) years after exhaustion of all legal remedies.

(3) **Acquisition documents processed by Central Purchasing Division.** The Central Purchasing Division shall retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later.

(b) **Records retention location.** A state agency shall retain procurement records and documents in a reasonably accessible location unless a written waiver is provided by the State Purchasing Director.

(c) **Records availability.** A state agency shall make acquisition records available to the State Purchasing Director for review and the OMES Audit staff for audit purposes.

(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

260:115-5-11. State agency acquisitions

(a) A state agency shall submit a requisition to the State Purchasing Director for each of its acquisitions, whenever:

(1) the agency does not have a CPO and/or approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 and an acquisition exceeds Five Thousand Dollars ($5,000.00);

(2) the agency's acquisition authority has been reduced by the OMES Director and the acquisition exceeds the dollar amount of the reduced acquisition authority; or,

(3) an acquisition exceeds the state agency's acquisition authority.

(b) OMES may contract with a state agency for the services of qualified personnel to assist or conduct purchasing activities for the agency upon written request by the agency or in the event the State Purchasing Director determines the needs of the agency are such to require qualified procurement personnel. [Reference 74 O.S. §85.3] The state agency ~~shall~~may reimburse administrative costs to OMES for the services of employees necessary to provide procurement services pursuant to this subsection.

260:115-5-13. Authorized signatures for state agency procurement

(a) State agencies shall provide the State Purchasing Director with a current Authorized Signature Form. The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, sole source certifications, change order requests, and surplus property transactions that may be submitted to the State Purchasing Director. To notify the State Purchasing Director a designation no longer exists, the form shall be dated and identify the name and title of those individuals who are no longer designated by the appointing authority to sign and approve requisitions, sole source certifications, change order requests and surplus property transactions. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

(b) State agencies shall also maintain a list of individuals designated by the appointing authority to sign and approve requisitions, sole source certifications, change order requests, and purchase orders for acquisitions within the agency's approved acquisition authority. The list shall include the name, title, and signature of each individual, the effective date of their signature authorization and ending date of the authorization, when applicable. The agency shall maintain a file of the signature authority lists in the location of the agency's centralized procurement records, and shall be available to the State Purchasing Director, upon request.

260:115-5-15. Agency savings reporting

On ~~October 1, 2010 and October 1 of each year thereafter~~September 1 of each year, the chief administrative officer of each state agency shall submit an electronic report to the State Purchasing Director listing savings realized by the agency in the previous fiscal year through the application of best spend practices. The September 1st date is within the State Purchasing Director's discretion to change. If such date is changed, the State Purchasing Director shall provide state agencies with advance written notice six months prior to the new date the electronic reports are due. The State Purchasing Director will define the report content required to collect savings data from state agencies, which will include but may not be limited to:

(1) total spend by commodity; and

(2) participation in mandatory statewide contracts.

260:115-5-21. Procedures for state agency privatization contracts

A state agency desiring to contract to privatize a function, program, service, unit or division valued at ~~One Hundred Thousand Dollars ($100,000.00)~~One Million Dollars ($1,000,000.00) or more shall be subject to the Oklahoma Privatization of State Functions Act [Reference 74 O.S. §§588.1 et seq] and the privatization contract procedures established by the State Purchasing Director.

SUBCHAPTER 7. PROCUREMENT

PART 1. GENERAL PROCUREMENT

260:115-7-3. Methods state agencies use to make acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

(1) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule~~regardless of the acquisition purchase price~~ at the fair market price if the supplier's delivery date meets state agency requirements. State Use Committee contracts are mandatory contracts to the extent a fair market value has been established. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S. §§ 3001 et seq. If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule.

~~(2) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or non-mandatory.~~

~~(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.~~

~~(B) **Non-mandatory statewide contracts.** State agencies are encouraged to use non- mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.~~

(~~3~~2) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency or if it does not have an established fair market value, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S. §549.1 or statewide contracts as follows:

(A) If a state agency determines in the acquisition of a product or service within the agency's acquisition authority, the product or service is available from OCI and is the lowest and best offer, the agency may place a direct order with OCI without competitive bidding. If an acquisition is competitively bid, the award shall be made to OCI upon determination that OCI is lowest and best.

(B) For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to OMES for issuance of a solicitation to include OCI as a vendor. The award shall be made to OCI if such product or service is the lowest and best bid.

(C) If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.

(D) If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.

(E) If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the OMES Director shall resolve the issue.

(3) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or non-mandatory.

(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(B) **Non-mandatory statewide contracts.** State agencies are encouraged to use non- mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.

(4) ~~**Standard contracts.**~~**Open Market Acquisitions.** State agencies may make acquisitions within their approved acquisition authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of this Chapter, any other applicable laws or rules, and the agency's approved internal purchasing procedures. The most common types of acquisitions include:

(A) **Contract for definite quantity.** If a state agency is able to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for acquisition by the state agency.

(B) **Contract for indefinite quantities.** If an agency is unable to establish a definite quantity of

items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for an indefinite quantity of items or services.

(C) **Contract for scheduled acquisitions.** When a state agency's needs for certain items are compiled (aggregated) and purchased in bulk at predetermined intervals, the State Purchasing Director or the state agency may establish a contract for scheduled acquisitions. The intervals shall be established in accordance with market characteristics or using agency consumption patterns, with consideration of seasonal factors and warehousing facilities. A schedule shall be developed for particular commodities monthly, quarterly, or annually. If a contract for scheduled acquisitions is established for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.

(5) **Sole source and sole brand acquisitions.**

(A) State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make a sole source or sole brand acquisition within the agency's acquisition authority. [Reference: 74 O.S. §85.45j]

(B) The chief administrative officer of any state agency not utilizing the State's financial and information system for acquisitions shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Five Thousand Dollars ($5,000.00) executed by the state agency in the preceding month pursuant to the Oklahoma Central Purchasing Act. The monthly list shall be submitted on a form prescribed and approved by the State Purchasing Director.

(C) If the sole source or sole brand acquisition amount exceeds the agency's acquisition authority, the agency shall submit the requisition to the State Purchasing Director.

(6) **Emergency acquisition.** State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make an emergency acquisition in accordance with 74 O.S. §85.7.

(7) **Acquisitions from other governmental agencies.** A state agency may contract with any other department of state government or institution pursuant to 74 O.S. §581 or §1001 through §1008. A state agency may contract with any "public agency" pursuant to 74 O.S.§1001 through §1008, which includes a political subdivision of this state or another state, and any agency of this state or of the United States. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(8) **Acquisition pursuant to waiver.** If the OMES Director approves a state agency's request for a waiver pursuant to 260:115-1-6, a state agency with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7 may make the acquisition for which the waiver was approved, within their approved purchasing authority limit.

PART 3. REQUIREMENTS FOR ACQUISITIONS

260:115-7-15. Acquisitions over $25,000.00 and not exceeding $50,000.00

(a) **Basic requirements.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions exceeding $25,000.00 but not exceeding $50,000.00 in accordance with this section, by means of a formal method of competitive solicitation, i.e. sealed bid solicitations.

(b) **Acquisition preparation.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the specifications, terms and conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the agency shall develop evaluation criteria for the acquisition prior to bid opening.

(c) **Supplier selection.**

(1) The state agency shall solicit all registered suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director or the Federal government shall not be awarded a contract.

(2) State agencies shall solicit prices and delivery dates by means of sealed bid using mail or electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.

(3) The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.

(4) All awards shall be based on lowest and best or best value criteria.

(5) Certifications, verifications and other required documents.

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit,

the ~~vendor's~~supplier's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. §85.4]

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(D) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

(i) Form of bond. The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashiers check.

(ii) Irrevocable letter of credit. In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit. (iii)Bond or surety return. When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

(E) **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204. Documentation of verification of registration and status with the Secretary of State must include, at a minimum, a copy of the entity summary information from the Secretary of State's website or the supplier's statement providing specific details supporting the exemption claimed, must be filed in the acquisition file.

260:115-7-19. Emergency acquisitions

State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make an emergency acquisition authorized by 74 O.S. §85.7. For an emergency acquisition over One Hundred Thousand Dollars ($100,000.00), the State Purchasing Director shall:

(1) select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce;

(2) Obtain the following certifications, verifications and other required documents, as applicable, from the supplier selected for contract award:

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the ~~vendor's~~ supplier's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(iv) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

(I) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashiers check.

(II) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit.

(III) **Bond or surety return.** When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

(v) **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204. Documentation of verification of registration and status with the Secretary of State must include, at a minimum, a copy of the entity summary information from the Secretary of State's website or the supplier's statement providing specific details supporting the exemption claimed, must be filed in the acquisition file.

PART 5. COMPETITIVE SEALED SOLICITATIONS

260:115-7-30. Competitive sealed solicitations

(a) **General.** The State Purchasing Director shall utilize a competitive sealed solicitation as required by state law and rules of this Chapter or when it is determined by the acquiring agency to be in the best interest of the state. Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal or request for quotation.

(b) **Solicitation contents.** The solicitation shall indicate all information the supplier shall submit with the supplier's bid.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodities for which the supplier registers. Notification is dependent upon a supplier providing the Office of Management and Enterprise Services valid and up-to-date information.

(2) **Suppliers a state agency recommends.** The State Purchasing Director will also notify suppliers recommended by a state agency for a solicitation.

(d) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify each supplier sent the original solicitation of the amendment.

(1) A supplier shall acknowledge receipt of an amendment in the supplier's bid or quotation for submission by the closing date and time specified in the solicitation.

(2) If a supplier has already submitted a bid, the supplier shall submit an acknowledgment of receipt of the amendment by the closing date and time specified in the solicitation.

(e) **Limited contact.** The State Purchasing Director may limit contact regarding a solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact may be described in the solicitation. All communication between suppliers and the acquiring agency related to a solicitation shall:

(1) be limited to the acquiring agency's designated procurement personnel;

(2) strictly prohibited from any other acquiring agency personnel, unless otherwise stated in the solicitation; and,

(3) be documented in writing and filed in the acquisition file.

(f) **Evaluation method.** The State Purchasing Director shall ensure that an evaluation method is clearly identified in any solicitation. The method shall be one of the following:

(1) lowest and best; or,

(2) best value.

(g) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(h) **Terms and conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition. Except as otherwise provided by Section 3206.3 of Title 70 of the Oklahoma Statutes and Section 1365 of this title, any patented property or copyrighted material developed by contracts subject to the Central Purchasing Act, shall be the property of the State of Oklahoma under the sole management of the Office of Management and Enterprise Services. [74 O.S. §34.3(B)]

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contract shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.

(3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of

Oklahoma, any or all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(i) **Non-Collusion certification.** The State Purchasing Director shall include a non-collusion certification statement in a solicitation. The non-collusion certification shall be included with any bid or proposal submitted to the agency issuing the solicitation.

(j) **Pre-bid conference.** The State Purchasing Director may state in a solicitation that a supplier pre-bid conference will be held and shall state whether supplier attendance is mandatory or non-mandatory.

(k) **Shipping.** Bidders shall include all costs associated with delivery of the acquisition F.O.B. destination to the receiving state agency in the solicitation response, unless otherwise specified in the solicitation.

(l) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the ~~electronic~~receipt of ~~an online~~a bid, the OMES Director may authorize OMES to accept ~~an electronic~~a bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(m) **Bid receipt.** Upon receipt, a state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(n) **Firm bid for ~~sixty (60)~~one hundred twenty (120) days.** A supplier's bid shall be considered a firm bid for ~~sixty (60)~~one hundred twenty (120) days following the bid closing date, unless otherwise stated in the solicitation.

(o) **Sample submission.** A solicitation may specify submission of samples to the State Purchasing Director for evaluation purposes. Any samples requested must be provided free of charge.

(1) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.

(2) **Return of bidder samples.** Samples which are not destroyed by testing will be returned at the supplier's expense if return of the samples is stipulated in the supplier's solicitation response.

(3) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(4) **Samples become property of state.** A sample shall become the property of the State of Oklahoma unless a bidder requests its return and will be disposed of in the same manner as surplus or salvage property.

[OAR Docket #19-644; filed 6-21-19]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 125. STATE EMPLOYEE SUGGESTION PROGRAMS

[OAR Docket #19-649]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
260:125-1-1 [NEW]
260:125-1-2 [NEW]
Subchapter 3. State Employee Suggestion Program Requirements [NEW]
260:125-3-1 [NEW]
260:125-3-2 [NEW]
260:125-3-3 [NEW]
260:125-3-4 [NEW]
260:125-3-5 [NEW]
260:125-3-6 [NEW]
260:125-3-7 [NEW]
Subchapter 5. State of Oklahoma Rights [NEW]
260:125-5-1 [NEW]
AUTHORITY:
Office of Management and Enterprise Services Human Capital Management Division; 74 O.S. Section 1604(D)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 20, 2018
COMMENT PERIOD:
December 17, 2018 through January 23, 2019
PUBLIC HEARING:
January 23, 2019
ADOPTION:
March 7, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 8, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
These rules provide the regulatory framework for the optional implementation of the State Employee Suggestion Programs by state agencies. The State Employee Suggestion Program was put into place by legislation that became effective November 1, 2016. The rules prescribe the requirements each state agency must comply with in the event that a state agency implements an Employee Suggestion Program. The rules also set forth the rights of the State of Oklahoma as to material submitted as a suggestion and all information pertaining to the suggestion and the suggester.
CONTACT PERSON:
Tracy Hird, Deputy General Counsel, (405) 522-3428

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

260:125-1-1. Purpose

The purpose of this chapter is to provide standards and procedures for the optional implementation of State Employee Suggestion Programs by state agencies as prescribed by Section 1604 of Title 74.

260:125-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning:

"Adopt" means to accept an employee's idea for implementation.

"Agency" means any office, department, board, commission or institution of the executive branch of state government.

"Appointing Authority" means the chief administrative officer of an agency. As the term is used in the State Employee Suggestion Program rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Award" means the monetary payment made to an employee who has submitted a suggestion that was implemented by a state agency.

"Eligible" means the suggester and the suggestion meets the criteria set forth in Section 1604 of Title 74.

"Employee" means any person, permanent or temporary, full, or part-time, classified or unclassified, except the chief administrative officer of an agency, who receives a salary or wage from the State of Oklahoma.

"State Employee Suggestion Program" means the program implemented by a state agency to promote efficiency and effectiveness of state governmental operations in accordance with Section 1604 of Title 74.

"Suggestion" means a constructive idea to improve directly, with economic benefit and tangible cost savings, the operations of a state agency.

SUBCHAPTER 3. STATE EMPLOYEE SUGGESTION PROGRAM REQUIREMENTS

260:125-3-1. Designated evaluators

Each Appointing Authority shall assign an individual(s) to evaluate a suggestion and recommend the suggestion for adoption, partial adoption, adoption with modification, or rejection. Each Appointing Authority shall develop guidelines setting forth the time period for evaluations.

260:125-3-2. Development of forms

Each Appointing Authority shall develop forms to be used by the state agency in administering their State Employee Suggestion Program.

260:125-3-3. Suggestion submission

Suggestions shall be submitted via hard copy, fax, or online in a legible manner on the application forms to be provided by the Appointing Authority. Each Appointing Authority shall develop requirements for suggestion submissions that include, at a minimum, the solution and how it can be accomplished; the current methods, practice, or problem; and a cost-benefit analysis of the anticipated savings that will result from implementing the suggestion, and the method used to determine the calculated savings.

260:125-3-4. Notification of suggestion adoption or rejection

Each suggester shall be notified in writing by the Appointing Authority of the decision to adopt or reject the submitted suggestion.

260:125-3-5. Appeals

(a) Each Appointing Authority shall assign an individual(s) to review appeals submitted by suggesters.

(b) A suggester may, by appeal, request that either a denial of award or the amount of an award be reconsidered.

(c) Each Appointing Authority shall develop guidelines for the appeals process that include, at a minimum, the appeal period, appeal format, required appeal information, and appeal submission process.

260:125-3-6. Payment of awards

Each Appointing Authority may establish a payment award scale in accordance with the statutory requirement that the amount of any award does not exceed twenty percent (20%) of the cost savings to the agency.

260:125-3-7. Documentation retention

Each Appointing Authority shall be responsible for retaining and maintaining all agency evaluations and implementation plans.

SUBCHAPTER 5. STATE OF OKLAHOMA RIGHTS

260:125-5-1. State rights

The State of Oklahoma has the right to use a suggestion in any form or modification it deems appropriate without making any payment except for the award determined by the applicable Appointing Authority. All suggestions, whether implemented or not, become the property of the State of Oklahoma. The State of Oklahoma has the right to make public all suggesters' identities who are granted an award under the Employee Suggestion Program.

[OAR Docket #19-649; filed 6-21-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

[OAR Docket #19-664]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Operation and Procedures
310:2-3-5. Access to agency records pursuant to the Open Records Act [AMENDED]
Subchapter 27. Contracts with Charitable Health Care Providers
310:2-27-4. Application to contract as a charitable health care provider [AMENDED]
Subchapter 31. Human Subjects Protection [NEW]
310:2-31-1. General purpose [NEW]
310:2-31-2. Scope [NEW]
310:2-31-3. Definitions [NEW]
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310:2-31-6. Authority of IRB [NEW]
310:2-31-7. IRB procedures [NEW]
310:2-31-8. Training [NEW]
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310:2-31-28. Requirements for reporting to ORI [NEW]
310:2-31-29. Institutional administrative actions [NEW]
310:2-31-30. Record retention [NEW]
Subchapter 35. Tanning Facilities Requirements [NEW]
310:2-35-1. Purpose [NEW]
310:2-35-2. Sign contents for entrances to tanning rooms or tanning establishments [NEW]
310:2-35-3. Unlawful act [NEW]
310:2-35-4. Signage [NEW]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 51 O.S. § 24A.1 et seq., 51 O.S. § 151 et seq., 63 O.S. § 7302 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
45 C.F.R. Part 46
45 C.F.R. Parts 50 and 93
Incorporating rules:
310:2-31-4
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207
GIST/ANALYSIS:
SUBCHAPTER 3: GENERAL OPERATIONS AND PROCEDURES
The current rule within Subchapter 3 outlines the procedure and fees associated with requests for information and/or records pursuant to the Oklahoma Open Records Act, 51 O.S. §24A.1 *et seq*. These changes amend the recommended method for submitting records requests, shorten the length of time before they are considered "abandoned," and alters the fee schedule. The previous rule contained outdated fee information and did not provide adequate explanation of how fees are assessed.
SUBCHAPTER 27: APPLICATION FOR CHARITABLE PROVIDERS
OAC 310:2-27 contains rules which establish eligibility criteria for charitable health care providers and medically indigent persons, procedures for entering into and revoking contracts between the Oklahoma State Department of Health or a city-county health department and a charitable health care provider and responsibilities and obligations pursuant to such contracts. These changes amend rule to update the length of malpractice claims history charitable providers would submit to the Department and modify the participation of the State Risk Management in certain program procedures.
SUBCHAPTER 31: HUMAN SUBJECTS PROTECTION
OAC 310:10, adopted in June 2002, incorporates by reference 45 CFR 46 (the Common Rule) and 42 CFR 50 (Research Integrity). Since adoption, a need to update stylistic and formatting aspects of the rule has been noted by the agency and partners. Additionally, upon review, it was determined that OAC 310:10 duplicates federal language and is duplicative between sections. It was also recommend that Chapter 10 be revoked in its entirety and moved to Chapter 2 as Subchapter 31. The revisions to this subchapter are anticipated to better protect human subjects (information or biospecimens) involved in research, while reducing burden, delay, and ambiguity for investigators.
The U.S. Department of Health and Human Services (HHS) and fifteen other Federal Departments and Agencies have issued final revisions to the Federal Policy for the Protection of Human Subjects (the Common Rule). A revision to OAC 310:10 is needed to align state rules with the federal changes. The concepts of identifiable information or biospecimens, technology, and related protections are not addressed. Moreover, the revised 45 CFR 46 specifically addresses public health authority and public health surveillance.
SUBCHAPTER 35: TANNING FACILITIES REQUIREMENTS
These changes amend rule to implement the agency's requirements from SB765 (2017), codified at 63 O.S. § 7302 *et seq.*, and effective on November 1, 2017. The amended rules prohibit the use of tanning facilities by persons under eighteen (18) years of age and require signage to be posted.
CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

310:2-3-5. Access to agency records pursuant to the Open Records Act

(a) **Official records.** Official records include records required to be maintained by law, the record in individual proceedings, records submitted to the agency by any person and any other "record" as that term is defined by the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq.,(OORA).

(b) **Access to official records.** Every record defined by subparagraph (a) above wherein disclosure is not otherwise specifically excepted by law or the OORA is subject to inspection and mechanical reproduction under the provisions set forth below.

(c) **Initial procedural requirements.** A request for inspection may be submitted ~~orally~~ electronically or in writing. To encourage a fully articulated and accurate response to a request, OSDH recommends a request be submitted ~~in a~~via its online form~~that is susceptible to memorialization such as a writing, electronic mail or facsimile transmission~~, and ~~must~~ that the requester reasonably describe the records sought. Additionally, if applicable, every request must specify a time period for which records are being sought. A request submitted in the manner above, reasonably describing the records sought and stating an appropriate time period for the records being sought will be timely acknowledged and further processed for a review and inspection. If, consistent with the OORA, agency personnel determine that~~a search is necessary to gather and collect the records sought by the requester,~~ the requester is required to pay, in advance, ~~a search~~ any~~fee~~ fees due pursuant to subparagraph (h) below.

(d) **Requests received.** Requests submitted to the agency will not be deemed to have been received unless and until the request has been identified by agency personnel as a request properly ~~filed~~ submitted in accordance with these rules. After a determination is made of the~~estimating~~ estimated~~the search time~~ any fees~~necessary~~ to gather the records requested, the agency will remit an advice of the cost to the requester. Upon receipt of the requested search fee, the request will be deemed to have been received by the agency and will then be timely processed for inspection.

(e) **Abandonment.** Any request not confirmed by a tender of the requisite search fee within thirty (30) days of advice by the agency shall be deemed to be abandoned, unless, within the time stated, the requester can show cause why the confirmation should be delayed or postponed.

(f) **Cooperation with the agency.** If the requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, the processing of the subject request may be suspended by agency personnel. A request that remains suspended for a period exceeding ~~sixty~~ (thirty ~~(60~~30) days shall be deemed abandoned.

(g) **Appeal.** If the agency cannot comply with the request for disclosure, the requester shall be notified ~~in writing~~ of the adverse determination, stating the reason(s) therefor~~and advising the requestor of the right to an administrative appeal under the provisions of subparagraph 310:2-3-7~~.

(h) **Fees.** The following are fees for ~~reproduction of~~preparing records for production:

(1) Paper Records

(A) Regular Copy - $0.25 per page

(B) Certified Copy - $1.00 per page

~~(C) Copy Sent by Fax - $0.35 per page~~

~~(D) Copy of Pages Larger than 8-1/2-X-14 - $0.50 per page~~

~~(2) Audio Tapes~~

~~AWith Tape Provided - $5.00 per tape~~

~~BWithout Tape Provided - $10.00 per tape~~

(~~3~~2) Electronic Records - If request is for records to be produced in a format other than an electronically transmitted digital file, ~~Requester is required to furnish blank tape(s) if reproduction is not in a printout format, and reimburse the agency for the actual cost of the use of the central processing unit of any computer used to access data stored therein~~ the preferred digital media to the agency. The agency will recoup the actual cost of transferring the records to the requester's media.

~~(A) $50.00 per hour programming time~~

~~(B) $50.00 per hour for other computer time~~

(~~4~~3) ~~Search~~ Other Fees - ~~$25.00~~ $30.00 per hour for requests that are solely for commercial purpose or that cause excessive disruption of the agencies essential functions. 'Excessive disruption' fees apply to requests that require more than eight (8) hours of actual employee work time to compile.

(4) Actual cost charged to OSDH by any third party related to obtaining records.

SUBCHAPTER 27. CONTRACTS WITH CHARITABLE HEALTH CARE PROVIDERS

310:2-27-4. Application to contract as a charitable health care provider

(a) The Department shall develop and provide an application form for a person to use when applying with a contracting agency to enter into a charitable provider contract.

(b) A person may apply to enter into a charitable provider contract as a charitable health care provider if such applicant:

(1) is licensed, certified, or otherwise authorized by the laws of Oklahoma to administer, in the ordinary course of business or in the practice of a profession, the health care that is the subject of the charitable health care contract;

(2) will provide health care to the medically indigent, as defined in section 310:2-27-2; and

(3) submits a complete application to a contracting agency requesting to enter into a charitable provider contract, and the application must include:

(A) the scope of service the applicant will provide to the medically indigent; and

(B) the applicant's claims history for the last ~~five (5)~~ ten (10) years.

(c) ~~The claims history of the applicant will be reviewed by Risk Management to determine the amount of the insurance premium the Department would be required to pay into the State's self-insurance pool. This assessment shall be considered by the contracting agency when determining if the applicant will be awarded a charitable provider contract. State Risk~~

~~Management will determine the amount of the insurance premium the Department would be required to pay into the State's self-insurance pool and manage claims related to the program, if and when they occur.~~ State Risk Management will determine the amount of the insurance premium the Department would be required to pay into the State's self-insurance pool and manage claims related to the program, if and when they occur.

(d) A health care provider whose application to be granted a charitable provider contract from a contracting agency is denied may re-submit the application with a different scope of service.

SUBCHAPTER 31. HUMAN SUBJECTS PROTECTION

310:2-31-1. General purpose

The Oklahoma State Department of Health (OSDH) is committed to providing an organizational structure in accordance with Title 45 of the Code of Federal Regulations Part 46 (45 C.F.R. Part 46) in order to establish and maintain an environment dedicated to the ethical principles for safeguarding the rights and welfare of the human beings recruited to participate in research activities. The OSDH Institutional Review Board (IRB) has been established to comply with federal regulations to protect the rights and welfare of human research participants. The OSDH IRB has the responsibility to assure that the risks of proposed research are justified by the potential benefits to the participants and to society, and that risks are minimized to the extent possible consistent with sound research design. The OSDH IRB must assure that the risks of research do not fall disproportionately on one group while the potential benefits accrue to another. The OSDH IRB oversees the consent process to assure voluntary and knowing consent to participate in research. Individuals who are particularly vulnerable or whose capacity to consent may be in doubt require additional protection during the consent process. The OSDH IRB must assure that the research is designed to respect individual privacy and preserve the confidentiality of private information. The OSDH IRB has the on-going oversight responsibility of approved research to monitor the welfare of the participants and to determine that the risks and potential benefits remain unchanged. The OSDH IRB may approve, disapprove, or require modifications to research protocols. It may also suspend or terminate its approval of ongoing (previously approved) research.

310:2-31-2. Scope

This subchapter applies to all individuals at the OSDH engaged in research involving human subjects. The Commissioner retains final authority to determine whether a particular activity is subject to this policy. This subchapter applies to any person paid by, under the control of, or affiliated with the OSDH, such as scientists, trainees, technicians and other staff members, students, fellows, guest researchers, or collaborators at OSDH. Research activities are exempt from this policy if they are determined by the OSDH IRB to meet criteria established in 45 C.F.R. § 46.101 (b) & (i) or 46.104(d), which is incorporated by reference in this subchapter.

310:2-31-3. Definitions

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

"Allegation" means any written or oral statement or other indication of possible scientific misconduct made to an institutional official.

"Commissioner" means the Commissioner of Health.

"Conflict of interest" means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal or professional relationships.

"Deciding official" means the institutional official appointed by the Commissioner who makes final determinations on allegations of scientific misconduct and any responsive institutional actions.

"Good faith allegation" means an allegation made with the honest belief that scientific misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

"Human subject" means a living individual about whom an investigator (whether professional or student) conducting research: 1) obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens or 2) obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

"Inquiry" means gathering information and initial fact-finding to determine whether an allegation or apparent instance of scientific misconduct warrants an investigation.

"Institution" means the Oklahoma State Department of Health unless the context clearly indicates otherwise.

"Investigation" means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred, and, if so, to determine the responsible person and the seriousness of the misconduct.

"IRB" means the OSDH Institutional Review Board established in accord with 45 C.F.R. Part 46 for the purposes expressed in this subchapter.

"IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

"OHRP" means the Office of Human Research Protections within the U.S. Department of Health and Human Services (DHHS) that is responsible for guidance, compliance, and oversight relative to the DHHS regulations for the protection of human subjects.

"ORI" means the Office of Research Integrity within the DHHS that is responsible for the scientific misconduct and research integrity activities of the U.S. Public Health Service.

"PHS" means the U.S. Public Health Service, an operating component of the DHHS.

"PHS regulation" means the Public Health Service regulation establishing standards for institutional inquiries and investigations into allegations of scientific misconduct.

"PHS support" means PHS grants, contracts, or cooperative agreements or applications therefore.

"Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

"Research Integrity Officer" means the OSDH official appointed by the Commissioner responsible for assessing allegations of scientific misconduct and determining when such allegations warrant inquiries and for overseeing inquiries and investigations.

"Research record" means any data, document, computer file, computer diskette, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted, or reported research that constitutes the subject of an allegation of scientific misconduct. A research record includes, but is not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts; and patient research files.

"Respondent" means the person against whom an allegation of scientific misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There may be more than one respondent in any inquiry or investigation.

"Retaliation" means any action that adversely affects the employment or other institutional status of an individual that is taken by an institution or an employee because the individual has in good faith, made an allegation of scientific misconduct or of inadequate institutional response thereto or has cooperated in good faith with an investigation of such allegation. Action taken may include an intentional act of omission.

"Scientific misconduct" or **"misconduct in science"** means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

"Whistleblower" means a person who makes an allegation of scientific misconduct.

310:2-31-4. Incorporations by reference

(a) This subchapter hereby incorporates by reference Part 46 of Title 45 of the Code of Federal Regulations (45 C.F.R. Part 46) as if fully set forth herein.

(b) This subchapter hereby incorporates by reference Part 50 and 93 of Title 42 of the Code of Federal Regulations (42 C.F.R. Parts 50 and 93) as if fully set forth herein.

310:2-31-5. Conditions of Federalwide Assurance

(a) The conditions of the Federalwide Assurance apply whenever:

(1) the OSDH IRB provides review and oversight of federally- supported human subject research, regardless of where the research takes place or by whom it is conducted; or

(2) the OSDH becomes engaged in federally supported human subject research.

(b) The OSDH becomes so engaged whenever:

(1) OSDH employees or agents intervene or interact with living individuals for purposes of federally supported research;

(2) OSDH employees or agents obtain, release, or access individually identifiable private information for purposes of federally-supported research; or

(3) The OSDH receives a direct federal award to conduct human subject research, directly or where all activities involving human subjects are carried out by a subcontractor or collaborator.

(c) Information provided under the Federalwide Assurance will be updated on schedule in order to maintain an active Assurance.

310:2-31-6. Authority of IRB

(a) All human subject research will be reviewed, prospectively approved, and subject to continuing oversight by the OSDH IRB.

(b) The OSDH IRB will have authority to approve, require modifications in, or disapprove the covered human subject research.

(c) Any suspension or termination of approval shall include a statement of the reasons for the IRB's actions and shall be reported promptly to the investigator, appropriate OSDH officials, and the Commissioner.

(d) The OSDH IRB will maintain IRB registration under the Office of Human Research Protections to permit the review of federally funded research.

310:2-31-7. IRB procedures

(a) All approved IRB research projects, whether approved by OSDH IRB or an external IRB, are subject to a review by OSDH data use review board to ensure release of OSDH data is allowable, limited to, and meets the statutory provisions pertaining to public health data sharing. Data may or may not be released based on the data use review board's findings.

(b) The OSDH and the OSDH IRB will established written procedures for:

(1) verifying whether proposed activities qualify for exemption from, or waiver of, IRB review;

(2) conducting IRB initial and continuing review, approving research, and reporting IRB findings to the investigator and the institution;

(3) reviewing the informed consent process including documentation using the federal regulations and guidance from the Office of Human Research Protections;
(4) determining which projects require review more often than annually, and which projects need verification from sources other than the investigator that no material changes have occurred;
(5) ensuring that changes in approved research are reported promptly and are not initiated without IRB approval, except when necessary to eliminate apparent immediate hazards to the subject; and
(6) ensuring prompt reporting to the IRB, institutional officials, the relevant department or agency head, any applicable regulatory body, and OHRP of any:
(A) unanticipated problems involving risks to subjects or others in any covered research;
(B) serious or continuing noncompliance with federal, institutional, or IRB requirements; and
(C) suspension or termination of IRB approval for federally- supported research.
(7) not allowing any member to participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB; and
(8) inviting individuals with competence in special areas to assist in the review of issues, which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

310:2-31-8. Training
(a) The OSDH IRB will ensure the existence of adequate education and oversight mechanisms (appropriate to the nature and volume of the research being conducted) to verify that research investigators, IRB members and staff, and other relevant personnel maintain continuing knowledge of, and comply with, relevant Federal regulations, OHRP guidance, other applicable guidance, state and local law, and IRB determinations and policies for the protection of human subjects.
(b) The OSDH IRB will require documentation of such training from research investigators as a condition for conducting human subject research.
(c) The OSDH Signatory Official, the OSDH Human Protections Administrator, and the OSDH IRB Chairperson will personally complete the relevant OHRP basic educational modules, or comparable training approved by OHRP, prior to submitting the Assurance.
(d) Members and staff of the IRB will complete relevant training before reviewing human subject research.

310:2-31-9. Compliance and knowledge of local context
The IRB will ensure that it has appropriate knowledge of the local context in which research for which it is responsible will be conducted.

310:2-31-10. Institutional support of the IRB
The institution will provide the OSDH IRB with resources, professional staff, and support staff sufficient to carry out their responsibilities efficiently and effectively.

310:2-31-11. FDA regulated research
The OSDH IRB will only review Food and Drug Administration (FDA) regulated research that has already been approved by an IRB that complies with FDA regulations.

310:2-31-12. Usage of procedures for allegation of possible misconduct in science
This section establishes procedure that will be followed when an allegation of possible misconduct in science is received by an OSDH official. Particular circumstances in an individual case may dictate variation from this procedure deemed in the best interests of OSDH and PHS. Any change from these procedures also must ensure fair treatment to the subject of the inquiry or investigation. The Commissioner should approve any significant variation in advance.

310:2-31-13. Research Integrity Officer
(a) The Commissioner will appoint the Research Integrity Officer (RIO) who will have primary responsibility for implementation of these procedures. The RIO Officer will be an employee of OSDH who is well qualified to handle the procedural requirements involved and is sensitive to the varied demands made on those who conduct research, those who are accused of misconduct, and those who report apparent misconduct in good faith.
(b) The RIO will appoint the inquiry and investigation committees and ensure that necessary and appropriate expertise is secured to carry out a thorough and authoritative evaluation of the relevant evidence in an inquiry or investigation. The RIO will do everything possible to ensure that confidentiality is maintained.
(c) The RIO will assist inquiry and investigation committees and all employees in complying with these procedures and with applicable standards imposed by government or external funding sources. The RIO shall maintain files of all documents and evidence and shall maintain the confidentiality and the security of the files.
(d) The RIO reports to ORI shall keep ORI apprised of any developments during the course of the inquiry or investigation that may affect current or potential DHHS funding for the individual(s) under investigation or that PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.
(e) The RIO has the responsibility under 42 C.F.R. Part 50 and 93 for the completion and submission of the institution's annual report to the federal Office of Research Integrity.

310:2-31-14. Whistleblower
(a) The whistleblower will have the opportunity to:

(1) Testify before the inquiry and investigation committees; (2) Review portions of the inquiry and investigation reports pertinent to his/her allegations or testimony;
(3) Be informed of the results of the inquiry and investigation; (4) Be protected from retaliation.
(b) If the RIO has determined that the whistleblower may be able to provide pertinent information on any portions of the draft report, these portions will be given to the whistleblower for comment.
(c) The whistleblower is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with an inquiry or investigation.

310:2-31-15. Respondent
(a) The respondent will:
(1) Be informed of the allegations when an inquiry is opened;
(2) Be notified in writing of the final determinations and resulting actions:
(3) Be interviewed by and present evidence to the inquiry and investigation committees;
(4) Review the draft inquiry and investigation reports:
(5) Have the right to advice of counsel.
(b) The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry or investigation. If the respondent is not found to have engaged in scientific misconduct, he or she has the right to receive assistance from OSDH in restoring his or her reputation.

310:2-31-16. Deciding official
The Deciding Official will be appointed by the Commissioner and will receive the inquiry and/or investigation report and any written comments made by the respondent or the whistleblower on the draft report. The Deciding Official will consult with the RIO or other appropriate officials and will determine whether to conduct an investigation, whether misconduct occurred, whether to impose sanctions, or whether to take other appropriate administrative actions.

310:2-31-17. Responsibility to report misconduct
All employees or individuals associated with OSDH should report observed, suspected, or apparent misconduct in science to the RIO. If an individual is unsure whether a suspected incident falls within the definition of scientific misconduct, he or she may call the RIO to discuss the suspected misconduct informally. If the circumstances described by the individual do not meet the definition of scientific misconduct, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem. At any time, an employee may have confidential discussions and consultations about concerns of possible misconduct with the Research Integrity Officer and will be counseled about appropriate procedures for reporting allegations.

310:2-31-18. Protecting the whistleblower
(a) The RIO will monitor the treatment of individuals who bring allegations of misconduct or of inadequate institutional response thereto, and those who cooperate in inquiries or investigations.
(b) The RIO will ensure that these persons will not be retaliated against in the terms and conditions of their employment or other status at the institution and will review instances of alleged retaliation for appropriate action. A grievance may be filed by the RIO for the whistleblower or the whistleblower may file for him or herself.
(c) Employees should immediately report any alleged or apparent retaliation RIO.
(d) OSDH shall protect the privacy of those who report misconduct in good faith to the maximum extent possible. For example, if the whistleblower requests anonymity, the institution will make an effort to honor the request during the allegation assessment or inquiry within applicable policies and regulations and state and local laws, if any. The whistleblower will be advised that if the matter is referred to an investigation committee and the whistleblower's testimony is required, anonymity may no longer be guaranteed. OSDH shall undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

310:2-31-19. Protecting the respondent
(a) Inquiries and investigations will be conducted in a manner that will ensure fair treatment to the respondent(s) in the inquiry or investigation and confidentiality to the extent possible without compromising public health and safety or thoroughly carrying out the inquiry or investigation.
(b) OSDH employees accused of scientific misconduct may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel or personal adviser to interviews or meetings on the case.

310:2-31-20. Cooperation with inquiries and investigations
OSDH employees will cooperate with the RIO and other OSDH officials in the review of allegations and the conduct of inquiries and investigations. Employees have an obligation to provide relevant evidence to the RIO or other OSDH officials on misconduct allegations.

310:2-31-21. Preliminary assessment of allegations
Upon receiving an allegation of scientific misconduct, the RIO will immediately assess the allegation to determine whether there is sufficient evidence to warrant an inquiry, whether PHS support or PHS applications for funding are involved, and whether the allegation falls under the PHS definition of scientific misconduct.

310:2-31-22. Conducting the inquiry

(a) **Initiation and purpose of the inquiry.** Following the preliminary assessment, if the RIO determines that the allegation provides sufficient information to allow specific follow-up, involves PHS support, and is within the PHS definition of scientific misconduct, he or she will immediately initiate the inquiry process. In initiating the inquiry, the RIO should identify clearly the original allegation and any related issues that should be evaluated. The purpose of the inquiry is to make a preliminary evaluation of the available evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether there is sufficient evidence of possible scientific misconduct to warrant an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry must be set forth in an inquiry report.

(b) **Sequestration of the research records.** After determining that an allegation falls within the definition of misconduct in science and involves PHS funding, the RIO must ensure that all original research records and materials relevant to the allegation are immediately secured. The RIO may consult with ORI for advice and assistance in this regard.

(c) **Appointment of the inquiry committee.**

(1) The RIO, in consultation with other OSDH officials as appropriate, will appoint an inquiry committee and committee chair within 10 days of the initiation of the inquiry. The inquiry committee shall consist of individuals who:

(A) Do not have real or apparent conflicts of interest in the case;

(B) Are unbiased; and

(C) Have the necessary expertise to evaluate the evidence and issues related to the allegation.

(D) May be scientists, subject matter experts, administrators, lawyers, or other qualified persons, and they may be from inside or outside the institution.

(2) The Inquiry Committee will interview the principals and key witnesses, and conduct the inquiry.

(3) The RIO shall notify the respondent of the proposed committee membership in 10 days.

(4) If the respondent submits a written objection to any appointed member of the inquiry committee or expert based on bias or conflict of interest within 5 days, the RIO shall determine whether to replace the challenged member or expert with a qualified substitute.

(d) **Charge to the committee and the first meeting.**

(1) The RIO will prepare a charge for the inquiry committee that describes the allegations and any related issues identified during the allegation assessment and states that the purpose of the inquiry is to make a preliminary evaluation of the evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether there is sufficient evidence of possible scientific misconduct to warrant an investigation as required by the PHS regulation. The purpose is not to determine whether scientific misconduct definitely occurred or who was responsible.

(2) At the committee's first meeting, the RIO will review the charge with the committee, discuss the allegations, any related issues, and the appropriate procedures for conducting the inquiry, assist the committee with organizing plans for the inquiry, and answer any questions raised by the committee. The RIO and institutional counsel will be present or available throughout the inquiry to advise the committee as needed.

(e) **Inquiry process.** The inquiry committee will interview the whistleblower, the respondent, and key witnesses as well as examining relevant research records and materials. Then the inquiry committee will evaluate the evidence and testimony obtained during the inquiry. After consultation with the RIO and OSDH counsel, the committee members will decide whether there is sufficient evidence of possible scientific misconduct to recommend further investigation. The scope of the inquiry does not include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.

310:2-31-23. The inquiry report

(a) **Elements of the inquiry report.** A written inquiry report must be prepared that states the name and title of the committee members and experts, if any; the allegations; the PHS support; a summary of the inquiry process used; a list of the research records reviewed; summaries of any interviews; a description of the evidence in sufficient detail to demonstrate whether and investigation is warranted or not; and the committee's determination as to whether an investigation is recommended and whether any other actions should be taken if an investigation is not recommended. OSDH counsel will review the report for legal sufficiency.

(b) **Comments on the draft report by the respondent and the whistleblower.** After first redacting the identity of the whistleblower, the RIO will provide the respondent with a copy of the redacted draft inquiry report for comment and rebuttal, and will provide the whistleblower, if he or she is identifiable, with portions of the draft inquiry report that address the whistleblower's role and opinions in the investigation.

(c) **Confidentiality.** The RIO shall establish reasonable conditions for review to protect the confidentiality of the draft report.

(d) **Receipt of comments.** Within 14 calendar days of their receipt of the draft report, the whistleblower and respondent will provide their comments, if any, to the inquiry committee. Any comments that the whistleblower or respondent submits on the draft report will become part of the final inquiry report and record. Based on the comments, the inquiry committee may revise the report as appropriate.

310:2-31-24. Inquiry decision, notification, and confidentiality

(a) **Decision by deciding official.** The RIO will transmit the final report and any comments to the Deciding Official, who will make the determination of whether findings from the inquiry provide sufficient evidence of possible scientific misconduct to justify conducting an investigation. The inquiry is

completed when the Deciding Official makes this determination, which will be made within 60 days of the first meeting of the inquiry committee. Any extension of this period will be based on good cause and recorded in the inquiry file.

(b) **Notification.** The RIO will notify both the respondent and the whistleblower in writing of the Deciding Official's decision of whether to proceed to an investigation and will remind them of their obligation to cooperate in the event an investigation is opened. The RIO will also notify all appropriate institutional officials of the Deciding Official's decision.

(c) **Confidentiality.** A decision recommending further investigation pursuant to subsection (a) above shall be deemed to be confidential pursuant to 51 O.S. § 24A.12 and shall not be publicly disseminated beyond the persons identified in subsection (b) above.

310:2-31-25. Time limit for completing the inquiry report

The inquiry committee will normally complete the inquiry and submit its report in writing to the RIO no more than 60 calendar days following its first meeting, unless the RIO approves an extension for good cause. If the RIO approves an extension, the reason for the extension will be entered into the records of the case and the report. The respondent also will be notified of the extension.

310:2-31-26. Conducting the investigation

(a) **Purpose of the investigation.** The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine specifically whether misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy, clinical practice, or public health practice. The findings of the investigation will be set forth in an investigation report.

(b) **Sequestration of the research records.** The Research Integrity Officer will immediately sequester any additional pertinent research records that were not previously sequestered during the inquiry. This sequestration should occur before or at the time the respondent is notified that an investigation has begun. The need for additional sequestration of records may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.

(c) **Appointment of the Investigation Committee.** The Research Integrity Officer, in consultation with other OSDH officials as appropriate, will appoint an investigation committee and the committee chair within 10 days of the notification to the respondent that an investigation is planned or as soon thereafter as practicable. The investigation committee should consist of at least three individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and conduct the investigation. These individuals may be scientists, administrators, subject matter experts, lawyers, or other qualified persons, and they may be from inside or outside the institution. Individuals appointed to the investigation committee may also have served on the inquiry committee. The Research Integrity Officer will notify the respondent of the proposed committee membership within 5 days. If the respondent submits a written objection to any appointed member of the investigation committee or expert, the Research Integrity Officer will determine whether to replace the challenged member or expert with a qualified substitute.

(d) **Charge to the committee and the first meeting.**

(1) Charge to the committee. The Research Integrity Officer will define the subject matter of the investigation in a written charge to the committee that describes the allegations and related issues identified during the inquiry, defines scientific misconduct, and identifies the name of the respondent. The charge will state that the committee is to evaluate the evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether, based on a preponderance of the evidence, scientific misconduct occurred and, if so, to what extent, who was responsible, and its seriousness. During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the committee will notify the Research Integrity Officer, who will determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents.

(2) The first meeting. The Research Integrity Officer, with the assistance of institutional counsel, will convene the first meeting of the investigation committee to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The investigation committee will be provided with a copy of these instructions and, where PHS funding is involved, the PHS regulation.

(e) **Investigation process.** The investigation committee will be appointed and the process initiated within 30 days of the completion of the inquiry, if findings from that inquiry provide a sufficient basis for conducting an investigation. The investigation will normally involve examination of all documentation including, but not necessarily limited to, relevant research records, computer files, proposals, manuscripts, publications, correspondence, memoranda, and notes of telephone calls. Whenever possible, the committee should interview the whistleblower(s), the respondents(s), and other individuals who might have information regarding aspects of the allegations. Interviews of the respondent should be tape recorded or transcribed. All other interviews should be

transcribed, tape recorded, or summarized. Summaries or transcripts of the interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

310:2-31-27. The investigation report

(a) **Elements of the investigation report.** The final report submitted to ORI must describe the policies and procedures under which the investigation was conducted, describe how and from whom information relevant to the investigation was obtained, state the findings, and explain the basis for the findings. The report will include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct as well as a description of any sanctions imposed and administrative actions taken by the institution.

(b) **Comments on the draft report.**

(1) **Respondent.** After first redacting the identity of the whistleblower, the Research Integrity Officer will provide the respondent with a copy of the redacted draft investigation report for comment and rebuttal. The respondent will be allowed 5 days to review and comment on the draft report. The respondent's comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all the other evidence.

(2) **Whistleblower.** The Research Integrity Officer will provide the whistleblower, if he or she is identifiable, with those portions of the draft investigation report that address the whistleblower's role and opinions in the investigation. The report should be modified, as appropriate, based on the whistleblower's comments.

(3) **Institutional counsel.** The draft investigation report will be transmitted to the institutional counsel for a review of its legal sufficiency. Comments should be incorporated into the report as appropriate.

(4) **Confidentiality.** In distributing the draft report, or portions thereof, to the respondent and whistleblower, the Research Integrity Officer will inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality. For example, the Research Integrity Officer may request the recipient to sign a confidentiality statement or to come to his or her office to review the report. The identity of the whistleblower will be subject to public disclosure only as the RIO may determine is reasonable and appropriate by balancing the needs of the whistleblower to remain confidential with the needs of the IRB to comply with federal regulations enacted to protect the rights and welfare of human research participants.

(c) **Institutional review and decision.** Based on a preponderance of the evidence, the Deciding Official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions. If this determination varies from that of the investigation committee, the Deciding Official will explain in detail the basis for rendering a decision different from that of the investigation committee in the institution's letter transmitting the report to ORI. The Deciding Official's explanation should be consistent with the PHS definition of scientific misconduct, the institution's policies and procedures, and the evidence reviewed and analyzed by the investigation committee. The Deciding Official may also return the report to the investigation committee with a request for further fact- finding or analysis. The Deciding Official's determination, together with the investigation committee's report, constitutes the final investigation report for purposes of ORI review. When a final decision on the case has been reached, the Research Integrity Officer will notify both the respondent and the whistleblower in writing. In addition, the Deciding Official will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the respondent in the work, or other relevant parties should be notified of the outcome of the case. The Research Integrity Officer is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

(d) **Transmittal of the final investigation report to ORI.** After comments have been received and the necessary changes have been made to the draft report, the investigation committee should transmit the final report with attachments, including the respondent's and whistleblower's comments, to the Deciding Official, through the Research Integrity Officer.

(e) **Time limit for completing the investigation report.** An investigation should ordinarily be completed within 120 days of its initiation, with the initiation being defined as the first meeting of the investigation committee. This includes conducting the investigation, preparing the report of findings, making the draft report available to the subject of the investigation for comment, submitting the report to the Deciding Official for approval, and submitting the report to the ORI.

310:2-31-28. Requirements for reporting to ORI

(a) An institution's decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation as it relates to the PHS definition of scientific misconduct, and the PHS applications or grant number(s) involved. ORI must also be notified of the final outcome of the investigation and must be provided with a copy of the investigation report. Any significant variations from the provisions of the institutional policies and procedures should be explained in any reports submitted to ORI.

(b) If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the PHS regulation, the Research Integrity Officer will submit a report of the planned termination to ORI, including a description of the reasons for the proposed termination.

(c) If the institution determines that it will not be able to complete the investigation in 120 days, the Research Integrity Officer will submit to ORI a written request for an extension that explains the delay, reports on the progress to date, estimates the date of completion of the report, and describes other

necessary steps to be taken. If the request is granted, the Research Integrity Officer will file periodic progress reports as requested by the ORI.

(d) When PHS funding or applications for funding are involved and an admission of scientific misconduct is made, the Research Integrity Officer will contact ORI for consultation and advice. Normally, the individual making the admission will be asked to sign a statement attesting to the occurrence and extent of misconduct. When the case involves PHS funds, the institution cannot accept an admission of scientific misconduct as a basis for closing a case or not undertaking an investigation without prior approval from ORI.

(e) The Research Integrity Officer will notify ORI at any stage of the inquiry or investigation if:

(1) there is an immediate health hazard involved;

(2) there is an immediate need to protect Federal funds or equipment;

(3) there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;

(4) it is probable that the alleged incident is going to be reported publicly; or

(5) the allegation involves a public health sensitive issue, e.g., a clinical trial; or

(6) there is a reasonable indication of possible criminal violation. In this instance, the institution must inform ORI within 24 hours of obtaining that information.

310:2-31-29. Institutional administrative actions

(a) OSDH will take appropriate administrative actions against individuals when an allegation of misconduct has been substantiated. If the Deciding Official determines that the alleged misconduct is substantiated by the findings, he or she will decide on the appropriate actions to be taken, after consultation with the Research Integrity Officer. The actions may include:

(1) withdrawal or correction of all pending or published abstracts and papers emanating from the research where scientific misconduct was found.

(2) removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment;

(3) restitution of funds as appropriate.

(b) Termination of OSDH employment or resignation prior to completing inquiry or investigation. The termination of the respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible scientific misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent, without admitting to the misconduct, elects to resign his or her position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed. If the respondent refuses to participate in the process after resignation, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the committee's review of all the evidence.

(c) Restoration of the respondent's reputation. If the institution finds no misconduct and ORI concurs, after consulting with the respondent, the Research Integrity Officer will undertake reasonable efforts to restore the respondent's reputation if necessary. Depending on the particular circumstances, the Research Integrity Officer should consider notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of scientific misconduct was previously publicized, or expunging all reference to the scientific misconduct allegation from the respondent's personnel file. Any institutional actions to restore the respondent's reputation must first be approved by the Deciding Official.

(d) Protection of the whistleblower and others. Regardless of whether the institution or ORI determines that scientific misconduct occurred, the Research Integrity Officer will undertake reasonable efforts to protect whistleblowers who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. Upon completion of an investigation, the Deciding Official will determine, after consulting with the whistleblower, what steps, if any, are needed to restore the position or reputation of the whistleblower. The Research Integrity Officer is responsible for implementing any steps the Deciding Official approves. The Research Integrity Officer will also take appropriate steps during the inquiry and investigation to prevent any retaliation against the whistleblower.

(e) Allegations not made in good faith. If relevant, the Deciding Official will determine whether the whistleblower's allegations of scientific misconduct were made in good faith. If an allegation was not made in good faith, the Deciding Official will determine whether any administrative action should be taken against the whistleblower.

(f) Interim administrative actions. Institutional officials will take interim administrative actions, as appropriate, to protect Federal funds and ensure that the purposes of the Federal financial assistance are carried out.

310:2-31-30. Record retention

After completion of a case and all ensuing related actions, the Research Integrity Officer will prepare a complete file, including the records of any inquiry or investigation and copies of all documents and other materials furnished to the Research Integrity Officer or committees. The Research Integrity Officer will maintain and dispose of the records of any inquiry or investigation in compliance with the approved records retention schedule for the office of the Commissioner. The ORI or other authorized DHHS personnel will be given access to the records upon request. These records are subject to public review or copying unless otherwise exempt from disclosure pursuant to the Oklahoma Open Records Act.

SUBCHAPTER 35. TANNING FACILITIES REQUIREMENTS

310:2-35-1. Purpose

This Chapter applies to tanning facilities and their owners or operators. The rules are to implement the provisions of 63 O.S. Section 7302.

310:2-35-2. Sign contents for entrances to tanning rooms or tanning establishments

(a) **Posting signage.** At least one (1) sign shall be posted in a place readily visible to persons entering a facility where a tanning device is operated. The sign shall be black text on white or other highly visible contrasting colors and include the language provide in 63 O.S. § 7302(C) in letters at least 1/2 inch high . The sign shall have dimensions not less than 8 $\frac{1}{2}$ inches by 11 inches.

(b) **Signs shall have the following statements:**

(1) It is unlawful for a tanning facility or operator to allow a person under eighteen (18) years of age to use any tanning device;

(2) A tanning facility or operator that violates the provision shall be subject to a civil penalty;

(3) An individual may report a violation of one or more provisions to the local law enforcement agency; and

(4) The health risks associated with tanning include, but are not limited to, skin cancer, premature aging of skin, burns to the skin, and adverse reactions to certain medications foods, and cosmetics.

(c) **Placing Signs.** Signs shall be in place within 30 days of the effective date of these rules.

310:2-35-3. Unlawful act

It shall be unlawful for any person under eighteen (18) years of age to use any tanning device of any tanning facility in this state.

310:2-35-4. Signage

For any tanning facility, the owner, operator or lessee shall see that signage is posted as required in this Subchapter.

[OAR Docket #19-664; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 205. ALARM AND LOCSKMITH INDUSTRY [REVOKED]

[OAR Docket #19-665]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [REVOKED]
310:205-1-1. Purpose [REVOKED]
310:205-1-2. Definitions [REVOKED]
310:205-1-3. Adopted references [REVOKED]
310:205-1-3.1. Compliance with intent of chapter [REVOKED]
Subchapter 3. License Requirements [REVOKED]
310:205-3-1. General application and license requirements [REVOKED]
310:205-3-2. Application and license fees, period and display, and examination alternatives or prerequisites [REVOKED]
310:205-3-3. Burglar alarm license requirements [REVOKED]
310:205-3-4. Fire alarm license requirements [REVOKED]
310:205-3-5. Monitoring license requirements [REVOKED]
310:205-3-7. Fire sprinkler license requirements [REVOKED]
310:205-3-8. Locksmith license requirements [REVOKED]
310:205-3-9. Electronic Access Control license requirements [REVOKED]
310:205-3-10. Closed Circuit Television license requirements (CCTV) [REVOKED]
310:205-3-11. Nurse Call System license requirements [REVOKED]
Subchapter 5. Special Provisions [REVOKED]
310:205-5-1. Commercial fire alarm tagging requirements [REVOKED]
310:205-5-2. Fire sprinkler tagging requirements [REVOKED]
310:205-5-3. Residential alarm tagging requirements [REVOKED]
Subchapter 7. Enforcement [REVOKED]
310:205-7-1. License revocation and suspension [REVOKED]
310:205-7-2. Prohibited acts [REVOKED]

AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; Senate Bill 1866 (2012) Section 1.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019

COMMENT PERIOD:
February 15, 2019 through March 21, 2019

PUBLIC HEARING:
March 19, 2019

ADOPTION:
March 19, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 13, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
This action revokes the rules of the Department concerning the alarm and locksmith industry. Effective November 1, 2012, the authority to "promulgate, adopt, amend, and repeal rules consistent with the provisions of the Alarm and Locksmith Industry Act for the purpose of governing the establishment and levying of administrative fines and the examination and licensure of alarm or locksmith companies, managers, technicians, and salespersons" [SB 1866 (2012), § 19] was transferred from the State Board of Health to the Commissioner of Labor. See OAC 380:75 for rules promulgated by the Commissioner of Labor, effective July 11. 2013. See OAC 310:205 in the 2011 Edition of the OAC for full text of rules as last promulgated by the State Board of Health.

CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:205-1-1. Purpose [REVOKED]

~~The rules in this Chapter implement the Alarm and Locksmith Industry Act, Title 59 O.S. Section 1800.1 et seq.~~

310:205-1-2. Definitions [REVOKED]

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

~~**"Burglar alarm company"** means a business that provides burglar alarm systems to others by any means, including, but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of a burglar alarm system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.~~

~~**"Burglar alarm company manager"** means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.~~

~~**"Burglar alarm salesperson"** means a person who sells to others on behalf of a licensed Oklahoma burglar alarm company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in design, plan, specification and/or lay out of a burglar alarm system on behalf of a burglar alarm company.~~

~~**"Burglar alarm technician"** means an individual who is employed by an Oklahoma licensed burglar alarm company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service burglar alarm equipment.~~

~~**"Burglar alarm trainee"** means an individual who is employed by an Oklahoma licensed burglar alarm company to assist burglar alarm technicians or managers and learn to properly install, service, and sell burglar alarm equipment.~~

~~**"CABO"** means The Council of American Building Officials.~~

~~**"Certificate of course completion"** means a document acceptable to the Committee which signifies satisfactory completion of course work.~~

~~**"Certification of a system"** shall mean testing per applicable code of any burglar alarm, fire alarm, electronic access control, closed circuit television, nurse call, locksmithing equipment, or fire sprinkler alarm system by a properly licensed individual working for a properly licensed company to verify that the system complies with all of the requirements of the applicable code or standard.~~

~~**"Closed circuit television"** or **"(CCTV)"** means a system that provides video surveillance of an area or a client prescribed area primarily by means of transmitting and/or recording of visual signals through cameras, receivers, monitors, and/or other visual imaging equipment.~~

~~**"Closed circuit television company"** means a business that provides closed circuit television systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, and/or servicing of a CCTV system; holding one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.~~

~~**"Closed circuit television manager"** means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such closed circuit television business or a branch thereof.~~

~~**"Closed circuit television technician"** means an individual who is employed by an Oklahoma licensed closed circuit television company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service closed circuit television equipment.~~

~~**"Closed circuit television trainee"** means an individual who is employed by an Oklahoma licensed closed circuit television company to learn to properly install and service closed circuit television equipment.~~

~~**"Closed circuit television salesperson"** means a person who sells to others on behalf of a closed circuit television company by any means, including but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in the sale, design, plan, and/or lay out of a closed circuit television system on behalf of a closed circuit company.~~

~~**"Commercial building"** means a building or structure used for any purpose or occupancy that is not defined in this section as a Residential Building.~~

~~**"Commercial fire alarm license"** means the category of license which authorizes a fire alarm company, manager, technician, trainee or salesperson to engage in the fire alarm industry activities in compliance with this Chapter for any work performed in residential or commercial application.~~

~~**"Commercial fire sprinkler license"** means the category of license which authorizes a fire sprinkler company, manager, trainee, and/or technician to engage in the fire sprinkler alarm industry activities in compliance with this chapter for any residential or commercial application.~~

~~**"Committee"** means the Alarm and Locksmith Industry Committee.~~

~~**"Department"** means the Oklahoma State Department of Health.~~

~~**"Electronic access control"** means the use of qualifying devices or identification methods at various points to control the movement of people within pre-defined perimeters through the use of electronic card readers, keypads, biometrics devices, or a combination of technologies that receives its primary power from an external source.~~

~~**"Electronic access control company"** means a business that offers to, or engages in, the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of electronic access control systems.~~

~~**"Electronic access control company manager"** means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function~~

~~and local operations of such electronic access control business or a branch thereof.~~

~~**"Electronic access control technician"** means an individual who is employed by an Oklahoma licensed electronic access control company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, and/or service electronic access control equipment.~~

~~**"Electronic access control trainee"** means an individual who is employed by an Oklahoma licensed electronic access control company to learn to properly install and service electronic access control equipment.~~

~~**"Electronic access control salesperson"** means a person who sells to others on behalf of an electronic access control company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and/or a person who participates in design, plan, and/or lay out of an electronic access control system on behalf of a electronic access control company.~~

~~**"Fire alarm company"** means a business that provides fire alarm systems to others by any means including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, and/or servicing of fire alarm system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly. The company shall be licensed as a residential or commercial fire alarm company as defined by this Chapter.~~

~~**"Fire alarm company manager"** means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such alarm industry business or a branch thereof.~~

~~**"Fire alarm salesperson"** means a person who sells to others on behalf of a fire alarm company by any means including but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and or a person who participates in design, plan and/or lay out of an fire alarm system on behalf of an fire alarm company. The salesperson shall be licensed as a residential or commercial fire alarm salesperson as defined by this Chapter.~~

~~**"Fire alarm technician"** means an individual who is employed by an Oklahoma licensed Fire Alarm Company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, certify, inspect, or service fire alarm equipment. The fire alarm technician shall be licensed as a residential or commercial fire alarm technician as defined by this Chapter~~

~~**"Fire alarm trainee"** means an individual who is employed by an Oklahoma licensed Fire Alarm Company to assist fire alarm technicians or managers and learn to properly install, service and sell fire alarm equipment.~~

~~**"Fire sprinkler company"** means a business that provides fire sprinkler systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to install, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of a fire sprinkler system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation either directly or indirectly. The company shall be licensed as a residential or commercial company as defined by this Chapter.~~

~~**"Fire sprinkler company manager"** means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.~~

~~**"Fire sprinkler inspector"** means an individual who is employed by an Oklahoma licensed alarm company to inspect and test a fire alarm sprinkler system to determine if it has been installed and is operating according to the appropriate code or standard.~~

~~**"Fire sprinkler technician"** means an individual who is employed by an Oklahoma licensed fire sprinkler company to install, service and sell, maintain, repair, and/or test fire sprinkler equipment. The fire sprinkler technician shall be licensed as a residential or commercial fire sprinkler technician as defined by this Chapter.~~

~~**"Fire sprinkler technician trainee"** means an individual who is employed by an Oklahoma licensed fire sprinkler company to assist fire sprinkler technicians or managers and learn to properly install and service fire sprinkler systems.~~

~~**"IBC"** means the International Building Code.~~

~~**"ICC"** means the International Code Council, Inc.~~

~~**"Inspection"** shall mean the visual observation or system test of any burglar alarm system, fire alarm system, electronic access control system, closed circuit television system, nurse call system, lock system, or fire sprinkler system to determine if the system has been installed and is operating according to the applicable code or standard.~~

~~**"Locksmith company"** means a business that provides locksmithing to others by any means, including but not limited to, design, install, service, repair, re-key, re-pin, sell, inspect, rebuild, record, adjust, unlock mechanical or electronic locks or advertisement of locksmith services; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.~~

~~**"Locksmith company manager"** means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such locksmith business or branch thereof.~~

~~**"Locksmith salesperson"** means a person who sells to others on behalf of a locksmith company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, or a person who participates in design, plan, and/or lay out of locksmithing equipment on behalf of a locksmith company.~~

~~**"Locksmith technician"** means an individual who is employed by an Oklahoma licensed locksmith company to design, install, service, inspect, repair, re-key, re-pin, sell, rebuild,~~

~~record, adjust, or unlock mechanical or electronic locks on behalf of a locksmith company.~~

~~**"Locksmith trainee"** means an individual who is employed by an Oklahoma licensed locksmith company to learn to properly install, service, repair, rebuild, re-key, re-pin, sell, or unlock mechanical or electronic locks on behalf of a locksmith company.~~

~~**"Locksmith tool"** means any tool designed specifically to aid in removal, disassembly, re-assembly, installation, or maintenance of, or to be used to defeat or by pass any electric or mechanical lock or system.~~

~~**"Manufactured Housing"** means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12 192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m²)or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home, and each shall be regarded as manufactured housing.~~

~~**"Monitoring company"** means a business that offers to, or does monitor burglar alarms, electronic access control systems, closed circuit television, nurse call systems, and/or fire alarms located in Oklahoma.~~

~~**"Monitoring company manager"** means an individual who is employed by an Oklahoma licensed monitoring company and has control of the monitoring of systems located in Oklahoma.~~

~~**"Multiple activity office"** means a location where more than one regulated activity is performed or conducted.~~

~~**"Multipurpose Fire Sprinkler System"** means a single piping system within residential building and manufactured housing where the same piping system simultaneously serves both domestic and fire protection needs and are not independent systems in any manner as described by the 1999 edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D).~~

~~**"NFPA"** means the National Fire Protection Association.~~

~~**"NICET"** means the National Institute of Certification in Engineering Technologies, a certification program sponsored by the National Society of Professional Engineers.~~

~~**"Nurse call system"** means a device or a series or assembly of interconnected devices which, when activated by automatic or manual means, produces an audible, visual, or electronic signal intended to detect or annunciate a need to summon response by a local medical staff or local medical personnel.~~

~~**"Nurse call company"** means a business that provides nurse call systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of nurse call systems; holding oneself or one's company out for hire to perform any such tasks; or otherwise offering to perform any such tasks for compensation, either directly or indirectly.~~

~~**"Nurse call company manager"** means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such nurse call system business or a branch thereof.~~

~~**"Nurse call technician"** means an individual who is employed by an Oklahoma licensed nurse call system company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service nurse call system equipment.~~

~~**"Nurse call trainee"** means an individual who is employed by an Oklahoma licensed nurse call system company to learn to properly install and service nurse call system equipment.~~

~~**"Nurse call system salesperson"** means a person who sells to others on behalf of an nurse call company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and/or a person who participates in design, plan and/or lay out of an nurse call system on behalf of a nurse call company.~~

~~**"Ownership"** means the dominion, title, or proprietary right in a company subject to the Alarm and Locksmith Industry Act and this Chapter.~~

~~**"Qualifying devices"** means a device or combination of devices such as retina readers, finger print pads, bio-metric readers, card swipes, etc. that are used to identify persons who have authorized entry through electronic access control systems.~~

~~**"Residential building"** shall mean buildings arranged for the use of one (1) or two (2) family dwelling units, including not more than five (5) lodgers or boarders per family and multiple single family dwellings where each unit has an independent means of egress and is separated by a two (2) hour fire separation assembly and all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and the accessory structures as indicated in the 1995 edition of the CABO One and Two Family Dwelling Code.~~

~~**"Residential fire alarm license"** means the category of license which authorizes a fire alarm company, manager, technician, trainee or salesperson to engage in the fire alarm industry activities in compliance with this Chapter for fire alarm systems used in Residential Building and manufactured housing.~~

~~**"Residential fire sprinkler license"** means the category of license which authorizes a fire sprinkler company, manager, or technician or trainee to engage in the fire sprinkler industry activities in compliance with this Chapter for fire sprinkler systems used in Residential Building and manufactured housing.~~

~~**"Rough-in cabling or wiring"** means the act of installing the cabling or wiring required for the activities regulated by this Chapter. This will include the preparation of the site for cabling or wiring, but shall not include the installation or connection of any electronic devices or parts thereof.~~

~~**"Security verification"** means information submitted to the appropriate authority on each applicant to verify any criminal records.~~

~~**"Supervision"** means on-site supervision by a licensed manager, technician or salesperson.~~

~~**"System"** means a burglar alarm system, fire alarm system, fire sprinkler system, closed circuit television system, electronic access control system, locksmithing system, or a nurse call system, all as defined in these rules, or a portion or combination of~~

~~such alarms or systems. However, the term "system" shall not include the following: (i) an alarm system installed in a motor vehicle; (ii) a burglar alarm system or household fire warning system sold at retail to an individual end user for self-installation; (iii) a single station fire alarm device sold at retail to an individual end user for self-installation or installed by a fire department, the State Fire Marshal, a public agency, a volunteer fire association, or their designated representatives.~~

~~**"Trainee"** means an individual who is employed by an Oklahoma licensed company to learn to properly engage in the activities regulated by this Chapter that can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.~~

310:205-1-3. Adopted references [REVOKED]

~~The Board of Health hereby incorporates by reference the International Code Council (ICC) 2003 (IBC) Edition International Building Code; the (2002) Edition National Electrical Code (NFPA 70); the 2002 Edition National Fire Alarm Code (NFPA 72); the 2002 Edition Standard for the Installation of Sprinkler Systems(NFPA 13); the 2002 Edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D); the 2002 Edition Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four stories in Height (NFPA 13R); the 2003 Edition Standard for the Installation of Standpipe and Hose Systems (NFPA 14); the 2001 Edition Standard for Water Spray Fixed Systems for Fire Protection (NFPA 15); the 2003 Edition Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems (NFPA 16); the 2003 Edition Standard for the Installation of Stationary Pumps for Fire Protection (NFPA 20); the 2002 Edition Standard for the Installation of Private Fire Service Mains and Their Appurtenances (NFPA 24); the 2002 Edition Standard for the Inspection, Testing, and Maintenance Water Based Fire Protection Systems (NFPA 25); and the 2003 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101) as the minimum standard of installation for the alarm and locksmith industry in Oklahoma. If a conflict exists between any of the above referenced installation standards, the more stringent standard shall apply. If a conflict exists between any of the above referenced codes or standards and this Chapter, the requirements in this Chapter shall apply.~~

310:205-1-3.1. Compliance with intent of chapter [REVOKED]

~~Where no specific standards or requirements are specified in this chapter or within other codes or regulations adopted by the State Department of Health, compliance with the applicable standards of the National Fire Protection Association, American National Standard Institute (ANSI), or other nationally recognized fire safety standards approved by the State is prima facie evidence of compliance with the intent of this chapter.~~

SUBCHAPTER 3. LICENSE REQUIREMENTS [REVOKED]

310:205-3-1. General application and license requirements [REVOKED]

~~The categories of licensing in the alarm and locksmith industry shall be:~~

~~(1) Burglar alarm;~~
~~(2) Residential fire alarm;~~
~~(3) Commercial fire alarm;~~
~~(4) Alarm Monitoring;~~
~~(5) Fire sprinkler;~~
~~(6) Locksmith;~~
~~(7) Electronic access control;~~
~~(8) Closed circuit television; and,~~
~~(9) Nurse call.~~

310:205-3-2. Application and license fees, period and display, and examination alternatives or prerequisites [REVOKED]

~~(a) **Application and license fees.** The following fees apply to alarm and locksmith industry licensure:~~

~~(1) **Initial application and licensing fees.**~~

~~(A) Company application and License - $250.00; license issued after February 1, but before the end of the State fiscal year - $125.00 A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee. A company shall submit a list of employees licensed in accordance with the Alarm and Locksmith Industry Act, to the Department, with each application or renewal application for a company license.~~

~~(B) Company Manager and Plan and design - Application $100.00 and Licensing fee $100.00~~

~~(C) Inspector, technician, salesperson, technician trainee - Application $40.00 and Licensing fee $35.00~~

~~(D) Re-Examination, Per Attempt - $50.00~~

~~(E) Fire Sprinkler Technician Trainee $20.00~~

~~(F) Duplicate or Revised license $25.00~~

~~(2) **Renewal fees.**~~

~~(A) Company License - $250.00 A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee.~~

~~(B) Company Manager and Plan and design - $100.00~~

~~(C) Inspector, Technician, Salesperson - $35.00~~

~~(D) Trainee - $25.00~~

~~(E) Fire Sprinkler Technician Trainee $15.00~~

~~(b) **License period.**~~

~~(1) A license shall expire on June 30, 1991, and each year thereafter. Beginning on July 1, a license may be renewed by paying double the renewal fee. Any individual license renewal shall require the licensee to be listed as~~

~~an employee of a licensed company on the companies' renewal form or in a separate letter from the company which has been signed by the licensed manager of record. If an individual licensee cannot supply to the Department the required employment information, the licensee may request the Department to designate his or her license as inactive. The inactive designation of the license shall remain until the employment information is provided to the Department.~~

~~(2) Initial applicants for managers, technicians, salespersons, plan and design and trainees shall be submitted to the Department. This registration shall be contingent on a security background investigation. Trainees shall provide either:~~

~~(A) An application and a current criminal history record check dated within thirty days of application, from the Oklahoma State Bureau of Investigation. If the applicant has resided in any other state within the past ten (10) years a current criminal history record check from each state of previous residence will be required. In addition two (2) completed fingerprint cards and two (2) passport photo's. (This provides for temporary licensure) or;~~

~~(B) An application and two (2) completed fingerprint cards and two (2) passport photos. (This does not provide for temporary licensure.)~~

~~(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.~~

~~(4) A temporary license will be issued to an individual who has provided the documents required in 310:205-3-2(b)(2)(A). The temporary license will be valid for a period not to exceed (90) ninety days. An individual may be issued a second temporary license for good cause shown as determined by the Department.~~

~~(c) **Examination and Re-examination.** Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of the appropriate retest fee. Any person who fails to appear for a scheduled examination shall forfeit his/her examination fee. However, if the examinee notifies the Department within seventy two (72) hours before scheduled exam, the Department will reschedule the examination date with no additional fee required pursuant to 310:205-3-2(a)(1).~~

~~(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued license number shall be located on all vehicles that display the company name.~~

~~(e) **Personal license display.** Each manager, technician, technician trainee, or salesperson, shall possess the state issued card any time the person is working in such capacity. The individual license shall be presented to any authorized representative of the Oklahoma State Department of Health or other authorities having jurisdiction. In addition the individual shall have a photo I.D. in their possession while engaged in the licensed activity.~~

~~(f) **Personal license information.**~~

~~(1) Each individual license holder shall notify the Oklahoma State Department of Health, on a form specified and provided by the Oklahoma State Department of Health, within fourteen (14) days of the following:~~

~~(A) Any change in the home address.~~

~~(B) Any separation from an employer or change in employer.~~

~~(C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.~~

~~(2) No individual licensed under this Chapter shall contract for his services as an independent contractor without applying for and being issued a company and manager license under this Chapter. No company shall contract for the independent services of a holder of an individual license under this Section.~~

310:205-3-3. Burglar alarm license requirements [REVOKED]

~~Licensing requirements for the burglar alarm industry are as follows:~~

~~(1) **Company.**~~

~~(A) Each company shall employ an Oklahoma licensed burglar alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed burglar alarm manager at each office. Each burglar alarm company shall employ an Oklahoma licensed burglar alarm company manager. After January 1, 2003, all burglar alarm companies applying for initial licensure and/or any burglar alarm company which changes its burglar alarm company manager or ownership shall comply with Section 310:205-3-3(2)(C) of this chapter. After July 1, 2003, all burglar alarm companies will comply with section 310:205-3-3(2)(C) of this Chapter. A burglar alarm company shall notify the Department within fourteen (14) days in event of the death of the burglar alarm company manager or the manager's separation from the company for any other reason, and the company shall designate another licensed burglar alarm manager within (30) thirty days from separation.~~

~~(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.~~

~~(C) A burglar alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-3(1)(A). The company will notify the Department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.~~

~~(D) Each alarm company engaged in alarm business that sells a burglar alarm system to a consumer~~

~~upon request from the consumer shall within forty-eight (48) hours return the lockout, installer, or programming code of the system to the factory default setting when the consumer cancels the contract on customer-owned equipment. If a system is installed without a written contract with the consumer, the system shall have the lockout code, installer or programming code set at default.~~

~~(E) The customer shall be given a copy of all documents at the time of the sale and the company shall maintain a copy of all of the documents. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement, the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the customer's name and address. The minimum information described above shall be disclosed in one of the following two ways:~~

~~(i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract; or,~~

~~(ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale.~~

~~(2) **Manager.**~~

~~(A) Each application for licensure as a manager shall include verification of four (4) years of experience in the burglar alarm business. The experience shall include two (2) years verified/or licensed experience as a Burglar Alarm technician or other related experience approved by the Committee.~~

~~(B) Each burglar alarm manager applicant must pass an examination prescribed by the Committee.~~

~~(C) Each licensed burglar alarm company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.~~

~~(D) Each licensed burglar alarm company manager shall have a security background verification.~~

~~(E) Each licensed burglar alarm company manager that engages in residential systems must also be licensed as a residential fire alarm manager.~~

~~(3) **Technician.**~~

~~(A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.~~

~~(B) Each burglar alarm technician applicant must pass an examination prescribed by the Committee.~~

~~(C) Each technician shall have a security background verification.~~

~~(D) Each licensed burglar alarm technician that engages in residential systems must also be licensed as a residential fire alarm technician.~~

~~(E) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.~~

~~(4) **Technician/Salesperson Trainee.**~~

~~(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma burglar alarm company.~~

~~(B) A technician/salesperson trainee shall work under the direct supervision of a licensed burglar alarm company manager, burglar alarm technician or a burglar alarm salesperson.~~

~~(C) There shall be no more than three (3) technician/salesperson trainees per burglar alarm company manager, burglar alarm technician or burglar alarm salesperson per job site.~~

~~(D) Each technician/salesperson trainee shall have security background verification.~~

~~(E) Each licensed burglar alarm trainee that engages in residential systems must also be licensed as a residential fire alarm trainee.~~

~~(F) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.~~

~~(G) An individual who holds a trainee license can engage in the rough in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.~~

~~(5) **Salesperson.**~~

~~(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.~~

~~(B) Each burglar alarm salesperson applicant must pass an examination prescribed by the Committee.~~

~~(C) Each salesperson shall have a security background verification.~~

~~(D) Each licensed burglar alarm salesperson that engages in residential systems must also be licensed as a residential fire alarm salesperson.~~

310:205-3-4. Fire alarm license requirements [REVOKED]

~~Licensing requirements for the fire alarm industry are as follows:~~

~~(1) **Company.**~~

~~(A) Each company shall employ an Oklahoma licensed fire alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma shall have a licensed manager at each office regarding each regulated activity. Each company shall employ an Oklahoma licensed fire alarm company manager. All fire alarm companies will comply with section 310:205-3-4 (2)(H) of this Chapter. In~~

~~the event of the death of the fire alarm company manager or his/her separation from the company for any other reason, a burglar alarm company shall notify the Department within fourteen (14) days and name a licensed burglar alarm manager within thirty (30) days after separation.~~

~~(B) A licensed fire alarm technician or manager shall be on site for any work being performed.~~

~~(C) A company whose manager only holds a residential fire alarm manager license shall be issued a residential fire alarm company license.~~

~~(D) A company whose manager holds a commercial fire alarm manager license shall be issued a commercial fire alarm company license.~~

~~(E) A company with a residential fire alarm company license shall only offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarms for use in Residential Building and manufactured housing.~~

~~(F) A company with a commercial fire alarm company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.~~

~~(G) Any equipment installed by a company as part of a fire alarm system shall be listed by Underwriters Laboratories, Factory Mutual or any other nationally recognized testing entities for such purpose.~~

~~(H) A fire alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-4(1)(A). The company will notify the Department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.~~

~~(I) A properly licensed fire alarm technician or manager of a properly licensed alarm company shall perform the initial testing, inspection, or certification of the entire fire alarm system, and that licensed alarm company shall assume full responsibility for the installation of the alarm system.~~

~~(J) Each fire alarm company that sells a fire alarm system to a consumer upon request from the consumer shall within forty-eight (48) hours return the central station monitoring programming code of the system to the factory default setting when the consumer cancels the contract on customer owned equipment. If a system is installed without a written contract with the consumer, the system shall have the central station monitoring programming code set at default.~~

~~(2)~~ **~~Manager.~~**

~~(A) Each application for licensure as a fire alarm manager shall include verification of four (4) years of experience in the fire alarm business. The experience shall include two (2) years verified/or licensed experience as a fire alarm technician. If applying for residential fire alarm manager, experience must show residential technical experience. If applying for commercial fire alarm manager, experience must show commercial technical experience.~~

~~(B) Each residential fire alarm manager applicant must pass an examination prescribed by the Committee.~~

~~(C) Each commercial fire alarm manager applicant must pass an examination prescribed by the Committee.~~

~~(D) Each licensed company manager shall be responsible for all activities of the office they are listed as manager for within the State of Oklahoma.~~

~~(E) Each licensed company manager shall have a security background verification.~~

~~(F) A manager with a residential fire alarm manager license shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for use in Residential Building and manufactured housing. Each licensed Fire alarm company manager that engages in residential systems must also be licensed as a burglar alarm manager.~~

~~(G) A manager with a commercial fire alarm manager license may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.~~

~~(3)~~ **~~Technician.~~**

~~(A) Each technician shall work for a licensed Oklahoma fire alarm company and under the supervision of a fire alarm company manager.~~

~~(B) Each residential fire alarm technician applicant must pass an examination prescribed by the Committee.~~

~~(C) Each commercial fire alarm technician applicant must pass an examination prescribed by the Committee.~~

~~(D) Each technician shall have a security background verification.~~

~~(E) Each technician shall perform or supervise only fire alarm work within the fire alarm license category for which the fire alarm company is licensed. Each licensed fire alarm technician that engages in residential systems must also be licensed as a burglar alarm technician.~~

~~(F) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.~~

~~(4)~~ **~~Technician/Salesperson trainee.~~**

~~(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma fire alarm company.~~

~~(B) A technician/salesperson trainee shall work under the direct supervision of a licensed fire alarm company manager, fire alarm technician or a fire alarm salesperson.~~

~~(C) There shall be no more than three (3) technician/salesperson trainees per fire alarm company manager or fire alarm technician per job site.~~

~~(D) Each technician/salesperson trainee shall have a security background verification.~~

~~(E) Each technician/salesperson trainee shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems within the fire alarm license category for which the supervisor is licensed. Each licensed fire alarm trainee that engages in residential systems must also be licensed as a burglar alarm trainee.~~

~~(F) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.~~

~~(G) An individual who holds a trainee license can engage in the rough in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.~~

~~(5) **Salesperson.**~~

~~(A) Each salesperson shall work for a licensed Oklahoma fire alarm company and under the supervision of a fire alarm company manager.~~

~~(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design and sell fire alarm systems that meet applicable code standards when installed.~~

~~(C) Each salesperson shall have a security background verification.~~

~~(D) Each residential fire alarm salesperson applicant must pass an examination prescribed by the Committee.~~

~~(E) Each commercial fire alarm salesperson applicant must pass an examination prescribed by the Committee.~~

~~(F) Each salesperson shall design and sell only fire alarm systems in the license category for which the fire alarm company is licensed. Each licensed fire alarm salesperson that engages in residential systems must also be licensed as a burglar sales person.~~

310:205-3-5. Monitoring license requirements [REVOKED]

~~Licensing requirements for the alarm monitoring industry are as follows:~~

~~(1) Company.~~

~~(A) Each company shall employ an Oklahoma licensed alarm monitoring company manager. A monitoring license shall be issued to a monitoring facility, which offers and provides monitoring services to residential or commercial customers.~~

~~(B) Enhanced Call Verification.~~

~~(i) Except as provided in this subsection, a monitoring company shall attempt to verify that an activated signal from an alarm system designed to detect and signal an unauthorized intrusion or entry, before requesting a law enforcement response by:~~

~~(I) Calling the alarm user at the site of the alarm system with the activated signal; then~~

~~(II) If no contact is made with the alarm user at the site, calling a second telephone number provided by the alarm user of an individual authorized to cancel a response.~~

~~(ii) A monitoring company is not required to contact an alarm user who has obtained a written exemption from response verification from the local chief law enforcement officer or his designee.~~

~~(iii) A monitoring company is not required to call an alarm user if the system provides visual or audible verification of an unauthorized intrusion or entry by electronic means incorporated into the alarm system.~~

~~(iv) A monitoring company is not required to contact an alarm user for signals from medical, emergency, holdup, panic, ambush, nurse call systems, and/or fire alarms.~~

~~(2) **Manager.**~~

~~(A) Each manager shall be responsible for all activities of the company within the State of Oklahoma. In the event of the death of the monitoring company manager or his/her separation from the company for any other reason, a monitoring company shall notify the Department with fourteen (14) days and name another licensed burglar alarm manager within thirty (30) days from separation.~~

~~(B) Each manager shall have a security background verification.~~

310:205-3-7. Fire sprinkler license requirements [REVOKED]

~~Licensing requirements for the fire sprinkler industry are as follows:~~

~~(1) **Company.**~~

~~(A) Each company shall employ an Oklahoma licensed fire sprinkler company manager who shall attend the operations of that office. Each company which maintains multiple offices within Oklahoma, except for offices established for single event activity such as job site construction offices, shall have a licensed manager at each individual office. The company licensed manager shall attend only one (1) of the company offices in Oklahoma. In the event of the death of the fire sprinkler company manager or his/her separation from the company for any other reason, a fire sprinkler company shall notify the Department within fourteen (14) days and name another licensed fire sprinkler manager within thirty (30) days from separation.~~

~~(B) A licensed fire sprinkler technician or manager must be on job site of any work being performed.~~

~~(C) A company whose manager only holds a residential fire sprinkler manager license shall be issued a residential fire sprinkler license.~~

~~(D) A company whose manager holds a commercial fire sprinkler manager license shall be issued commercial fire sprinkler license.~~

~~(E) A company with a residential fire sprinkler company license shall only offer to, or engage in the planning, sales, installation, repair, alteration, service, and inspection of residential multipurpose fire sprinkler systems on residential building and manufactured housing.~~

~~(F) A company with a commercial fire sprinkler company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential or commercial use.~~

~~(2) **Manager.**~~

~~(A) Each residential fire sprinkler applicant must pass an examination prescribed by the Committee.~~

~~(B) Each licensed residential or commercial company manager accepts full responsibility for all activities of his company within the State of Oklahoma.~~

~~(C) A fire sprinkler company manager is a specialty contractor whose principal contracting business is the execution of contracts requiring the art, ability, experience, knowledge, science, and skill to design, fabricate, install, inspect (other than electrical), alter or repair, fire sprinkler systems, piping or tubing and appurtenances and equipment pertaining thereto, including both overhead and underground non potable water mains, fire hydrant mains, standpipes, and hose connections to fire sprinkler systems, air line systems used in connection with fire sprinkler systems, and tanks and pumps connected thereto, in compliance with nationally recognized standards including state and local codes and standards for layout, installation and maintenance of fire sprinkler systems.~~

~~(D) Each commercial fire sprinkler manager applicant must pass an examination prescribed by the Committee.~~

~~(E) A residential fire sprinkler manager shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of multipurpose fire sprinkler systems for use in Residential Building and manufactured housing.~~

~~(F) A commercial fire sprinkler manager may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential of commercial use.~~

~~(3) **Technician.**~~

~~(A) Each residential or commercial fire sprinkler technician must work for a licensed Oklahoma fire sprinkler company and work under the supervision of a fire sprinkler company manager.~~

~~(B) Each residential fire sprinkler technician applicant must pass an examination administered by the Department.~~

~~(C) Each commercial fire sprinkler technician applicant must pass an examination prescribed by the Committee.~~

~~(D) A commercial fire sprinkler technician working for a fire sprinkler company with a residential license shall only perform fire sprinkler work for which the company is licensed.~~

~~(4) **Technician Trainee.**~~

~~(A) A technician trainee shall be employed by a licensed Oklahoma fire sprinkler company.~~

~~(B) A technician trainee shall work under the direct supervision of a licensed fire sprinkler company manager or fire sprinkler technician.~~

~~(C) There shall be no more than ten (10) technician trainees per fire sprinkler company manager or fire sprinkler technician per job site.~~

~~(D) A technician trainee must submit a trainee application to the Oklahoma State Department of Health within fifteen (15) days of being hired by a Oklahoma licensed fire sprinkler company.~~

~~(5) **Inspector.**~~

~~(A) An applicant for initial licensure as a fire sprinkler inspector applicant must pass an exam prescribed by the Committee.~~

~~(B) Each fire sprinkler inspector shall work for a licensed fire sprinkler company.~~

~~(C) Each fire sprinkler inspector shall inspect and test each fire sprinkler system to determine if the system has been installed and is operating according to the appropriate code and standard before certifying the system.~~

~~(D) Each fire sprinkler inspector shall work for a fire sprinkler company which possesses an unlimited fire sprinkler company license.~~

310:205-3-8. Locksmith license requirements [REVOKED]

~~Licensing requirements for the locksmith industry are as follows:~~

~~(1) **Company.**~~

~~(A) Each company shall employ an Oklahoma licensed locksmith company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma shall have a licensed locksmith manager at each office. In the event of the death of the locksmith company manager or his/her separation from the company for any other reason, a locksmith company shall notify the Department within fourteen (14) days and name another licensed locksmith manager within thirty (30) days from separation.~~

~~(B) A licensed locksmith technician or manager shall be on site for any work being performed.~~

~~(C) A locksmith company may operate multiple offices provided each office has the same name and~~

~~ownership of the parent company and shall operate in compliance with 310:205-3-8(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.~~

~~(D) The initial sales and pinning of locks and lock system shall not require a locksmith license however, the repinning of locks subsequent to the initial sales shall require a locksmith license.~~

~~(E) Tow truck companies/operators licensed by the Department of Public Safety are exempted from the requirements of licensure and this Chapter when performing automotive locksmith services at their business location, and when performing automotive locksmith roadside services in a vehicle appropriate licensed and identified in accordance with the Department of Public Safety requirements for tow truck companies/operators.(Chapter 595:25)existing at the of the adoption of this rule or as may subsequently enumerated or adopted.~~

~~(F) An individual, company, corporation, institution, industry, business or religious organization, or employee thereof, is exempt from the requirements of this Chapter when performing locksmith category activities on the property of the same, provided the locksmith category services are not performed as a normal business practice on the property of another.~~

~~(2) **Manager.**~~

~~(A) Each application for licensure as a manager shall include verification of experience in the locksmith business. The experience shall include verified/or licensed experience as a locksmith technician.~~

~~(B) Each locksmith manager applicant must pass an examination prescribed by the Committee.~~

~~(C) Each licensed locksmith company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.~~

~~(D) Each licensed locksmith company manager shall have a security background verification.~~

~~(3) **Technician.**~~

~~(A) Each technician shall work for a licensed Oklahoma locksmith company and under the supervision of a locksmith company manager.~~

~~(B) Each locksmith technician applicant must pass an examination prescribed by the Committee.~~

~~(C) Each technician shall have a security background verification.~~

~~(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.~~

~~(4) **Technician Trainee.**~~

~~(A) A technician trainee shall be employed by a licensed Oklahoma locksmith company.~~

~~(B) A technician trainee shall work under the direct supervision of a licensed locksmith company manager or a locksmith technician.~~

~~(C) There shall be no more than three (3) technician trainees per locksmith company manager or locksmith technician per job site.~~

~~(D) Each technician trainee shall have security background verification.~~

~~(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.~~

~~(5) **Salesperson.**~~

~~(A) Each salesperson shall work for a licensed Oklahoma locksmith company and under the supervision of a locksmith company manager.~~

~~(B) Each locksmith salesperson applicant must pass an examination prescribed by the Committee.~~

~~(C) Each salesperson shall have a security background verification.~~

310:205-3-9. Electronic Access Control license requirements [REVOKED]

~~Licensing requirements for the electronic access control are as follows:~~

~~(1) **Company.**~~

~~(A) Each company shall employ an Oklahoma licensed electronic access control company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma shall have a licensed electronic access control manager at each office. In the event of the death of the electronic access control company manager or his/her separation from the company for any other reason, an electronic access control company shall notify the Department within fourteen (14) days and name another licensed electronic access control manager within thirty (30) days from separation.~~

~~(B) A licensed electronic access control technician or manager shall be on site for any work being performed.~~

~~(C) An electronic access control company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-9-(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.~~

~~(2) **Manager.**~~

~~(A) Each application for licensure as a manager shall include verification of experience in the electronic access control business. The experience shall include verified and/or licensed experience as an electronic access control technician.~~

~~(B) Each electronic access control manager applicant must pass an examination prescribed by the Committee.~~

~~(C) Each licensed electronic access control company manager shall be responsible for all activities~~

~~conducted within the State of Oklahoma by the office where they are listed as manager.~~

~~(D) Each licensed electronic access control company manager shall have a security background verification.~~

~~(3) **Technician.**~~

~~(A) Each technician shall work for a licensed Oklahoma electronic access control company and under the supervision of a electronic access control company manager.~~

~~(B) Each electronic access control technician applicant must pass an examination prescribed by the Committee.~~

~~(C) Each technician shall have a security background verification.~~

~~(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.~~

~~(4) **Technician/ Salesperson Trainee.**~~

~~(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma electronic access control company.~~

~~(B) A technician/salesperson trainee shall work under the direct supervision of a licensed electronic access control company manager, electronic access control technician or a electronic access control salesperson.~~

~~(C) There shall be no more than three (3) technician/salesperson trainees per electronic access control company manager, electronic access control technician or electronic access control salesperson per job site.~~

~~(D) Each technician/salesperson trainee shall have security background verification.~~

~~(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.~~

~~(F) An individual who holds a trainee license can engage in the rough in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.~~

~~(5) **Salesperson.**~~

~~(A) Each salesperson shall work for a licensed Oklahoma electronic access control company and under the supervision of a electronic access control company manager.~~

~~(B) Each electronic access control salesperson applicant must pass an examination prescribed by the Committee.~~

~~(C) Each salesperson shall have a security background verification.~~

310:205-3-10. Closed Circuit Television license requirements (CCTV) [REVOKED]

~~Licensing requirements for the CCTV industry are as follows:~~

~~(1) **Company.**~~

~~(A) Each company shall employ an Oklahoma licensed CCTV company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma, shall have a licensed CCTV manager at each office. In the event of the death of the CCTV company manager or his/her separation from the company for any other reason, a CCTV company shall notify the Department within fourteen (14) days and name another licensed CCTV manager within thirty (30) days from separation.~~

~~(B) A licensed CCTV technician or manager shall be on site for any work being performed.~~

~~(C) A CCTV company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-10(1)(A). The company will notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.~~

~~(2) **Manager.**~~

~~(A) Each application for licensure as a CCTV manager shall include verification of experience in the CCTV business. The experience shall include verified and/or licensed experience as a CCTV technician.~~

~~(B) Each closed circuit television manager applicant must pass an examination prescribed by the Committee.~~

~~(C) Each licensed CCTV company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.~~

~~(D) Each licensed CCTV company manager shall have a security background verification.~~

~~(3) **Technician.**~~

~~(A) Each technician shall work for a licensed Oklahoma CCTV company and under the supervision of a CCTV company manager.~~

~~(B) Each closed circuit television technician applicant must pass an examination prescribed by the Committee.~~

~~(C) Each technician shall have a security background verification.~~

~~(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.~~

~~(4) **Technician/Salesperson Trainee.**~~

~~(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma CCTV company.~~

~~(B) A technician/salesperson trainee shall work under the direct supervision of a licensed CCTV company manager, CCTV technician or a CCTV salesperson.~~

~~(C) There shall be no more than three (3) technician/salesperson trainees per CCTV company manager, CCTV technician or CCTV salesperson per job site.~~

~~(D) Each technician/salesperson trainee shall have security background verification.~~

~~(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.~~

~~(F) An individual who holds a trainee license can engage in the rough in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.~~

~~(5) **Salesperson.**~~

~~(A) Each salesperson shall work for a licensed Oklahoma CCTV company and under the supervision of a CCTV company manager.~~

~~(B) Each closed circuit television salesperson applicant must pass an examination prescribed by the Committee.~~

~~(C) Each salesperson shall have a security background verification.~~

310:205-3-11. Nurse Call System license requirements [REVOKED]

~~Licensing requirements for the nurse call industry are as follows:~~

~~(1) **Company.**~~

~~(A) Each company shall employ an Oklahoma licensed nurse call company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed nurse call manager at each office. In the event of the death of the nurse call company manager or his/her separation from the company for any other reason, a nurse call company shall notify the Department within fourteen (14) days and name another licensed nurse call manager within thirty (30) days from separation.~~

~~(B) A licensed nurse call technician or manager shall be on site for any work being performed.~~

~~(C) A nurse call company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-11(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.~~

~~(2) **Manager.**~~

~~(A) Each application for licensure as a manager shall include verification of experience in the nurse call business. The experience shall include verified and/or licensed experience as a nurse call technician.~~

~~(B) Each nurse call manager applicant must pass an examination prescribed by the Committee.~~

~~(C) Each licensed nurse call company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.~~

~~(D) Each licensed nurse call company manager shall have a security background verification.~~

~~(3) **Technician.**~~

~~(A) Each technician shall work for a licensed Oklahoma nurse call company and under the supervision of a nurse call company manager.~~

~~(B) Each nurse call technician applicant must pass an examination prescribed by the Committee.~~

~~(C) Each technician shall have a security background verification.~~

~~(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.~~

~~(4) **Technician/Salesperson Trainee.**~~

~~(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma nurse call company.~~

~~(B) A technician/salesperson trainee shall work under the direct supervision of a licensed nurse call company manager, nurse call technician or a nurse call salesperson.~~

~~(C) There shall be no more than three (3) technician/salesperson trainees per nurse call company manager, nurse call technician or nurse call salesperson per job site.~~

~~(D) Each technician/salesperson trainee shall have security background verification.~~

~~(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.~~

~~(F) An individual who holds a trainee license can engage in the rough in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.~~

~~(5) **Salesperson.**~~

~~(A) Each salesperson shall work for a licensed Oklahoma nurse call company and under the supervision of a nurse call company manager.~~

~~(B) Each nurse call salesperson applicant must pass an examination prescribed by the Committee.~~

~~(C) Each salesperson shall have a security background verification.~~

SUBCHAPTER 5. SPECIAL PROVISIONS [REVOKED]

310:205-5-1. Commercial fire alarm tagging requirements [REVOKED]

~~(a) **White Tag (Installation sticker).** The White Tag shall be the permanent visual record of the original installation and certification. The following additional requirements shall apply to the use of the White Tag:~~

~~(1) The tag must be permanently affixed to the main control panels as long as the system is in service.~~

~~(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable and have a self-adhesive backing.~~

~~(3) The tag shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";~~

~~(B) The certifying company's name, address, and telephone number (local office);~~

~~(C) The certifying company's commercial fire alarm license number;~~

~~(D) The signature and license number of the commercial Fire Alarm Technician certifying the system;~~

~~(E) The Fire Alarm Permit number;~~

~~(F) The model of the control panel;~~

~~(G) The date of certification; and,~~

~~(H) The Code, Edition and year under which the system was installed.~~

~~(4) Only the Fire Code Official may remove an installation tag.~~

~~(b)~~ **~~Traffic Light Bright Green Tag (Annual inspection tag/sticker).~~** ~~The Green Tag shall be the visual record of the last annual inspection or initial certification testing where the system was found to be operable with no impairments. The following additional requirements shall apply to the use of the Green Tag:~~

~~(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturers specifications.~~

~~(2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.~~

~~(3) The tag shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"~~

~~(B) The service companies name, address, and telephone number (local office);~~

~~(C) The service companies commercial fire alarm license number;~~

~~(D) The signature and license number of the commercial Fire Alarm Technician certifying the system; and~~

~~(E) The date the inspection was performed.~~

~~(4) Only a commercial Fire Alarm Technician, employed by a Fire Alarm Company or the Fire Code Official may remove the tag.~~

~~(c)~~ **~~Traffic Light Bright Yellow Tag (Annual inspection tag/sticker).~~** ~~Operational Fire Alarm System but with minor impairments. The intent of the Yellow Tag is to provide notification to the Authority Having Jurisdiction of a system that is operable with impairments that do not severely compromise the system's functional operation. The Yellow Tag shall be the visual record of the last annual inspection where the system was found to be operable but with minor impairments. The following additional requirements shall apply to the use of the Yellow Tag:~~

~~(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.~~

~~(2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.~~

~~(3) The tag shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";~~

~~(B) The service company's name, address, and telephone number (local office);~~

~~(C) The service company's commercial fire alarm license number;~~

~~(D) The signature and license number of the commercial Fire Alarm Technician certifying the system;~~

~~(E) The date the inspection was performed; and,~~

~~(F) A list of the impairments.~~

~~(4) Only a commercial Fire Alarm Technician, employed by a commercial Fire Alarm Company or the Fire Code Official may remove the tag.~~

~~(5) If a Yellow Tag is placed on a fire alarm system the commercial Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all impairments immediately or as soon as practicable, but no later than seventy-two (72) hours.~~

~~(d)~~ **~~Traffic Light Bright Red Tag (Annual inspection tag/sticker) Fire Alarm System Inoperable.~~** ~~The intent of the Red Tag is to provide notification to the Authority Having Jurisdiction of a Fire Alarm System that is inoperable.~~

~~(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.~~

~~(2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.~~

~~(3) The tag shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";~~

~~(B) The service company's name, address, and telephone number (local office);~~

~~(C) The service company's commercial fire alarm license number;~~

~~(D) The signature and license number of a commercial Fire Alarm Technician certifying the system;~~

~~(E) The date the inspection was performed;~~

~~(F) A list of the deficiencies that render the system inoperable; and,~~

~~(G) A list of any deficiencies present that do not render the system inoperable.~~

~~(4) Only a commercial Fire Alarm Technician, employed by a commercial Fire Alarm Company or the Fire Code Official may remove an annual inspection tag.~~

~~(5) If a Red Tag is placed on a fire alarm system the commercial Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all impairments immediately or as soon as practicable, but no later than twenty-four (24) hours.~~

310:205-5-2. Fire sprinkler tagging requirements [REVOKED]

~~(a) **White Sticker.** The white sticker shall be made from water durable material and permanently affixed to the riser of the fire protection system. The white sticker shall be affix this sticker at the time of acceptance. This sticker shall be completed with waterproof ink. The following additional requirements shall apply to the use of the White Sticker:~~

~~(1) The sticker shall be a permanently affixed sticker(glued back) that is completed by the contractor. This installation sticker shall be affixed to the riser directly adjacent to the data plate. This sticker will stay on the riser indefinitely. The sticker will be five inches in height and four inches in width.~~

~~(2) The sticker shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";~~

~~(B) The contractor's name;~~

~~(C) The contractor's complete address;~~

~~(D) The contractor's phone number;~~

~~(E) The contractor's Oklahoma State license number;~~

~~(F) The applicable version of NFPA 13 which the system was installed under;~~

~~(G) The date of installation;~~

~~(H) The technician's name responsible for installation; and~~

~~(I) The name of the Authority Having Jurisdiction(AHJ).~~

~~(3) All information shall be printed and be legible.~~

~~(4) Any subsequent addition(s) to the sprinkler shall require a new white sticker with the same data referenced above. The new sticker shall be placed on top of the previous sticker.~~

~~(b) **Traffic Light Bright Green Inspection/Service Tag.** The Traffic Light Bright Green Inspection/Service Tag shall be placed in a clear plastic sleeve and attached to the system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company and found to be operational. The following additional requirements shall apply to the use of the Traffic Light Bright Green Inspection/Service Tag:~~

~~(1) After annual inspection or initial installation of a sprinkler system the Traffic Light Bright Green Inspection/Service Tag shall be affixed to the riser when no impairments are found and the system appears to be operational.~~

~~(2) A Traffic Light Bright Green Inspection/Service Tag shall be attached to the riser each time the system is serviced or repaired and the appropriate block punched. Any necessary comments shall be printed in the provided space on the rear of the tag.~~

~~(3) The Traffic Light Bright Green Inspection/Service Tag shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"~~

~~(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;~~

~~(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;~~

~~(D) The day, month and year inspected in print, and punched;~~

~~(E) The Fire Alarm Licensed Sprinkler Inspector or Licensed Fire Alarm Sprinkler Company Manager's signature; and,~~

~~(F) The type of work performed punched in the appropriate block for each type of work, installation, service and inspection performed.~~

~~(4) The tag shall be "traffic light bright" green in color, five and one fourth inches (5 1/4") in height and two and five eights inches (2 5/8") in width.~~

~~(5) The tag shall be printed with dates and may be established for any six year period. After each printing a copy of the tag shall be sent to the State Fire Marshall and the State Health Department Licensing Division.~~

~~(6) The tag can be removed only by a Licensed Sprinkler Inspector or a Licensed Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.~~

~~(c) **Traffic Light Bright Yellow Inspection Tag.** The Traffic Light Bright Yellow Inspection Tag shall be placed in a clear plastic sleeve and be attached to the fire protection system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company and found to contain impairments, but continues to be operational. The application of this inspection tag requires notification to the Fire Code Official within seventy-two(72) hours. The following additional requirements shall apply to the use of the Traffic Light Bright Yellow Inspection Tag:~~

~~(1) The Traffic Light Bright Yellow Inspection Tag cannot be removed and/or replaced by a Traffic Light Bright Green Inspection/Service Tag until the condition that caused or created the impairment(s) has been corrected. The following are some examples of impairments where the use of the Traffic Light Bright Yellow Inspection Tag would be appropriate, provided the said impairments do not render the system inoperable:~~

~~(A) Minor loading of heads;~~

~~(B) Spare wrench or heads missing;~~

~~(C) Escutcheon rings missing;~~

~~(D) Minor head clearance violations (stock or storage);~~

~~(E) FDC cap missing;~~

~~(F) Glass on a gauge missing or broken;~~

~~(G) Stock piled within three feet of a riser;~~

~~(H) Ceiling tiles missing, where there are pendant head;~~

~~(I) Improper spacing of sprinkler heads (due to structural modifications by tenant);~~

~~(J) Incorrect head rating or type (due to hazard classification change);~~

~~(K) Water flow signaling devices missing;~~

~~(L) Valves not properly secured or supervised; and~~

~~(M) Water pressure up to 20% lower than design pressure.~~

~~(2) The tag shall be attached to the riser.~~

~~(3) The tag shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"~~

~~(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;~~

~~(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;~~

~~(D) The day, month and year inspected in print, and punched; and,~~

~~(E) The Licensed Fire Alarm Sprinkler Inspector or Licensed Sprinkler Company Manager's signature.~~

~~(4) The tag shall be "traffic light bright" yellow in color, five and one fourth inches (5 1/4") in height and two and five eights inches (2 5/8") in width.~~

~~(5) The tag shall be printed with dates and may be established for any six year period. After each printing a copy of the tag shall be sent to the State Fire Marshal and the State Health Department Licensing Division.~~

~~(6) The tag can be removed only by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority, after a determination of the system's condition has been made consistent with subsection (1) above. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.~~

~~(7) After the Traffic Light Bright Yellow Inspection Tag is placed on the sprinkler system the person or authority affixing the tag shall, in addition to notifying the Fire Code Official within seventy two (72) hours, notify the building owner or agent immediately or as soon as practicable. Notification to the Fire Code Official shall be accomplished by transmission of a copy of the inspection form, preferably by telephonic facsimile transmission, that was completed by the person or authority affixing the tag. When the impairments are corrected the system shall be re-inspected and the appropriate colored tag placed upon the system.~~

~~(d) **Traffic Light Bright Red Inspection Tag.** The Traffic Light Bright Red Inspection Tag shall be placed in a clear plastic sleeve and be attached to the fire protection system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Sprinkler Company Manager of a licensed sprinkler company and found to contain impairments that could, or do in fact, render it inoperable. The application of this inspection tag requires notification to the Fire Code Official within twenty-four (24) hours. The following additional requirements shall apply to the use of the Traffic Light Bright Red Inspection Tag:~~

~~(1) The Traffic Light Bright Red Inspection Tag cannot be removed and or replaced by a Traffic Light Bright Yellow Inspection Tag or a Traffic Light Bright Green Inspection/Service Tag until the condition that caused it to be inoperable has been corrected. The following deficiencies are appropriate for the use of the Traffic Light Bright Red Inspection Tag:~~

~~(A) Water pressure less than 80% of design pressure;~~

~~(B) Water turned off to the system;~~

~~(C) Frozen pipes;~~

~~(D) Inability of a licensed contractor to test the system because of obstructed drains;~~

~~(E) Severe head obstruction;~~

~~(F) Inoperable fire department connection; or~~

~~(G) Uncovered areas that the system was designed to cover.~~

~~(2) The tag shall be attached to the riser.~~

~~(3) The tag shall bear the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"~~

~~(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;~~

~~(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;~~

~~(D) The day, month and year inspected in print, and punched;~~

~~(E) The Licensed Fire Alarm Sprinkler Inspector or Licensed Fire Alarm Sprinkler Company Manager's signature; and,~~

~~(F) The appropriate impairments check boxes and comment lines.~~

~~(4) The tag shall be "traffic light bright" red in color, five and one fourth (5 1/4") inches in height and two and five eights (2 5/8") inches in width.~~

~~(5) The tag shall be printed with dates and may be established for any six year period. After each printing, a copy of the tag shall be sent to the State Fire Marshal and the State Health Department Licensing Division.~~

~~(6) The tag can be removed only by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority, after a determination of the system's condition has been made consistent subsection (1) above. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.~~

~~(7) After the Traffic Light Bright Red Inspection Tag is placed on the sprinkler system the person or authority affixing the tag shall, in addition to notifying the Fire Code Official within twenty-four (24) hours, notify the building owner or agent immediately or as soon as practicable but not later than twenty-four (24) hours. Notification to the Fire Code Official shall be accomplished by transmission of a copy of the inspection form, preferably by telephonic facsimile transmission, that was completed by the person~~

~~or authority affixing the tag. When the impairments are corrected the system shall be re-inspected and the appropriate colored tag placed upon the system.~~

310:205-5-3. Residential alarm tagging requirements [REVOKED]

~~A white sticker shall be permanently affixed to the residential fire alarm panel or if the panel is a self contained unit, the sticker shall be placed on the breaker panel door. The white sticker shall be affixed at the time of installation acceptance. The following additional requirements shall apply to the use of the white sticker:~~

~~(1) The white sticker shall be a permanently affixed sticker that is completed by the Alarm Panel contractor. The sticker shall remain on the panel indefinitely. The sticker shall be five inches (5") in length and four inches (4") in width.~~

~~(2) The white sticker shall contain the following information:~~

~~(A) "DO NOT REMOVE BY ORDER OF THE CODE OFFICIAL":~~

~~(B) The contractor's full name, complete address and phone number;~~

~~(C) The contractor's Oklahoma license number;~~

~~(D) The applicable version of the NFPA which the system was installed;~~

~~(E) The date of installation; and~~

~~(F) The installer's name and license number.~~

~~(3) All information on the white sticker shall be printed and legible.~~

SUBCHAPTER 7. ENFORCEMENT [REVOKED]

310:205-7-1. License revocation and suspension [REVOKED]

~~(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.~~

~~(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.~~

~~(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendre to any such offense may be subject to license suspension or revocation.~~

~~(d) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.~~

~~(e) Any person whose license is revoked pursuant to these rules may not perform alarm or locksmith industry work before attaining licensure pursuant to OAC 310:205.~~

310:205-7-2. Prohibited acts [REVOKED]

~~(a) No person, entity, or firm may perform burglar alarm, fire alarm, sprinkler alarm, locksmithing, electronic access control, closed circuit television, nurse call or monitoring work without first obtaining a license pursuant to these Rules.~~

~~(b) No person shall offer to engage in burglar alarm, fire alarm, sprinkler alarm, locksmithing, electronic access control, closed circuit television, nurse call or monitoring work during the period his license is suspended or revoked.~~

~~(c) No employing firm shall employ or use an unlicensed person to perform alarm and locksmith industry work.~~

~~(d) No person, entity, or firm may transfer a license or registration.~~

~~(e) No person, licensed pursuant to these Rules, shall enter into an agreement for the use of his license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Department.~~

~~(f) No person shall make a materially false or fraudulent statement in an application for license, engage in cheating, or otherwise commit an act in violation of title 59 O.S.1991, Section 1800.~~

[OAR Docket #19-665; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 250. FEE SCHEDULE FOR CONSUMER HEALTH SERVICE

[OAR Docket #19-666]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. License Classifications and Associated Fees for Consumer Health Services
310:250-3-1. Food establishments' fees [AMENDED]
310:250-3-2. Drug operational permits [AMENDED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 63 O.S. §1-1118
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
These changes modify the fee schedule for licensed temporary food establishments and drug manufacturers. The changes for fooed establishments were requested to address small businesses that participate in a single, extended, special event. The effect of this Rule change will set a cap on the fee and number of days for operation of these particular licensed food establishments that would otherwise experience a 180% increase in a single event license. The drug manufacturer license fee is set consistent with the food establishment license fee.
CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. LICENSE CLASSIFICATIONS AND ASSOCIATED FEES FOR CONSUMER HEALTH SERVICES

310:250-3-1. Food establishments' fees

(a) The following are license classifications and associated fees for food establishments, manufacturers, or wholesalers regulated by Title 63 O.S. § 1-915, Title 63 O.S. § 1-1118, Title 63 O.S. § 1-1119, or Title 63 O.S. § 1-1120 et seq., and the rules promulgated thereunder.

(1) Food service, manufacturing, or wholesale.
- (A) Initial - $425.00
- (B) Renewal - $335.00
- (C) Late Renewal - $375.00

(2) State Operated, Non-Profit or Health Facilities not meeting exempt status.
- (A) Initial - $175.00
- (B) Renewal - $125.00
- (C) Late Renewal - $150.00

(3) Seasonal includes any establishment that meets the definition of "Seasonal food establishment" outlined in OAC 310:257-1-2 where the license is valid for only one hundred eighty (180) consecutive days per year. The license may be reinstated no sooner than one hundred eighty 180 days after the expiration of the previous license.
- (A) Initial - $250.00
- (B) Reinstatement - $250.00

(4) The fee for a temporary food establishment, as defined in OAC 310:257-1-2, shall be $50.00 for the initial day of the temporary event ~~$100.00 for a three (3) day period~~ plus ~~$40.00~~$25.00 for each additional consecutive day. The total fee for a single temporary event license shall not exceed $250. No temporary event license shall be issued for more than fourteen (14) consecutive days.

(b) An establishment qualifies for a fee exempt license if it is a "food establishment - fee exempt" as that term is defined in OAC 310:257-1-2.

(c) Late renewal fees apply to any renewal application postmarked and/or received thirty (30) days after the expiration date of the license.

(d) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal. Thereafter, the establishment shall be required to pay an initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment.

310:250-3-2. Drug operational permits

The following are associated fees for over-the-counter wholesalers, brokers, and drug manufacturers regulated by the Drugs, Medical Devices and Cosmetics Article of the Public Health Code, Title 63 O.S. Sections 1-1119 and 1-1401 et seq. and the rules promulgated thereunder. Drug Operational Category includes any over-the-counter wholesalers, brokers and manufacturers of drugs:
- (A) Initial - ~~$375.00~~$425.00
- (B) Renewal - ~~$325.00~~$335.00
- (C) Late Renewal - ~~$350.00~~$375.00

[OAR Docket #19-666; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 410. WIC

[OAR Docket #19-667]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:410-1-1 [AMENDED]
Subchapter 3. Vendor Management
Part 1. General Provisions
310:410-3-2 [AMENDED]
Part 3. WIC Vendor Application and Authorization Process
310:410-3-10 [AMENDED]
310:410-3-11 [AMENDED]
310:410-3-12 [AMENDED]
310:410-3-14 [AMENDED]
Part 5. WIC Vendor Education
310:410-3-20 [AMENDED]
Part 7. WIC Vendor Authorization and Responsibilities
310:410-3-33 [REVOKED]
310:410-3-34 [REVOKED]
310:410-3-35 [AMENDED]
310:410-3-40 [AMENDED]
Part 9. WIC Vendor Compliance and Sanctions
310:410-3-51 [AMENDED]
310:410-3-52 [AMENDED]
310:410-3-53 [AMENDED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 62 O.S. § 34.76
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
These changes amend rules to update the existing rules as they pertain to retail vendors in the Women, Infants and Children (WIC) Program. The proposal updates the existing rules pertaining to the purpose definitions, food benefits designation and State vendor violations and sanctions. These changes incorporate and revise terminology applicable to the new e-WIC service payment system and away from food instrument terminology. The proposed revisions align the rule with federal standards for WIC operations as established by the United State Department of Agriculture (USDA). The proposed changes will eliminate an identified error in the rule that misclassifies certain vendor violations and will reclassify them to a lower level of sanction.
CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

310:410-1-1. Purpose

This Chapter establishes rules for the Special Supplemental Food Program for Women, Infants and Children (WIC). These rules are authorized in the Oklahoma State Finance Act at 62 O.S. 34.76, which authorize the Department to enter into contracts with third party administrators to establish a system for processing claims, to promulgate rules and develop procedures necessary for implementation and administration of the system; and to develop procedures for payment of vouchers.

SUBCHAPTER 3. VENDOR MANAGEMENT

PART 1. GENERAL PROVISIONS

310:410-3-2. Definitions

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

"Above 50% WIC Vendor" means a WIC retail vendor who expects to derive more than 50% of their annual food sales revenue from the redemption of WIC food ~~instruments~~ benefits from all of the WIC Programs for which they are authorized.

"Administrative warning" means a written notice which describes the nature of a violation to the WIC Program and a request for correction of the violation.

"APL" means the Approved Products List.

"Applicant" means the individual, partnership, limited partnership, unincorporated association, or corporation applying to be a WIC retail vendor, includes both Above 50% and Regular WIC Vendors.

"Application" means the application forms and other required materials submitted by a business entity to notify the department that the business entity desires to become a WIC retail vendor.

"Authorization" means the approval of an applicant who has met the WIC vendor criteria and has accepted a WIC vendor agreement as a WIC retail vendor.

"Business entity" means the retail business which an applicant or authorized WIC vendor operates at a particular vendor site.

"Commissioner" means the Commissioner of the Oklahoma State Department of Health or his designee.

"Corporate officer" means the identity of the officer of a corporation as set forth in its articles of incorporation as filed with the secretary of state wherein such entity is incorporated.

"Department" means the Oklahoma State Department of Health.

~~**"Department estimated cost"** means self-reported vendor prices on the vendor retail price survey, which are averaged and weighed by store type and region from the vendor price survey.~~

"Department representative" or **"Representative of the Department"** means an employee or authorized agent of the department.

"Food ~~Instrument"~~ or ~~"FI~~ Benefits" means ~~a~~ an ~~voucher, check,~~ electronic benefits transfer card (EBT)~~, coupon or other document~~ that document the specified supplemental WIC approved foods and the quantities of these foods for a specified period of time that have been prescribed for a WIC participant and ~~which~~ is used to obtain supplemental WIC approved foods.

"Grocery store" means a fixed and permanent retail store whose primary business is the sale of food.

~~**"Invalid vendor"** means a food instrument deposited or mailed by a vendor which has been encoded and rejected by the department's contract bank for the following reasons: the food instrument has not been stamped with the vendor number, the vendor number is unauthorized, unreadable, not in the space indicated, or a counterfeit vendor stamp is used. Typed or handwritten numbers shall not be accepted.~~

"Local agency" means a public or private, non-profit health or human services agency which provides health services, either directly or through an agreement, in accordance with the USDA WIC Regulations, or this Subchapter.

"MAR" means the Maximum Allowable Reimbursement amount for WIC approved foods.

"OAPA" means the Oklahoma Administrative Procedure Act.

"Oklahoma WIC retail food delivery system" means the system in which participants obtain WIC approved foods

by ~~submitting~~ processing a food ~~instrument~~ benefit ~~to~~at a WIC retail vendor.

"Participant" means authorized pregnant women, breast-feeding women, postpartum women, infants or children who are receiving supplemental WIC approved foods or food ~~instruments~~benefits under the WIC Program.

"Participant requested delivery" means a participant requested delivery of WIC approved foods from a vendor to an address specified by the WIC participant or proxy.

"Participant/vendor ratio" means the total number of WIC participants in a given region divided by the total number of WIC retail vendors in the same region.

"Peer Group" means the classification of WIC retail vendors with regards to competitive pricing.

"Pharmacy" means any store, ~~or~~ shop, department, or other place at a fixed and permanent location, where drugs, medicines, or liquid foods prescribed by a physician licensed to practice medicine in all its branches, for an individual are dispensed, or sold or offered for sale at retail value.

"Proxy" means a person who is authorized by the local agency and the WIC participant to accept and/or redeem food ~~instruments~~benefits on a participant's behalf.

"Regular WIC Vendor" means any WIC retail vendor who has not been determined to be an Above 50% WIC Vendor.

"Retail vendor price survey" means the current prices, reported to the department, by a vendor or a department representative as charges for WIC Approved Foods.

"Store type" means the classification of WIC retail vendors by their gross retail sales per year. Up to 1.5 million dollars in sales is a type 1 vendor site; 1.5 million to 5 million dollars in sales is a type 2 vendor site; over 5 million dollars in sales is a type 3 vendor site. A commissary is a type 4 vendor site and a pharmacy is a type 5 vendor site. An Above 50% vendor is a type 6 vendor site.

"SNAP" means the Supplemental Nutrition Assistance Program, formerly "Food Stamp."

"USDA" means the United States Department of Agriculture.

"USDA WIC regulations" means the regulations of the United States Department of Agriculture, Food and Nutrition Service, Special Supplemental Food Program for Women, Infants, and Children. 7 CFR 246 (1990).

"Vendor" or **"WIC retail vendor"** means the individual, partnership, limited partnership, unincorporated association, or corporation authorized by the department to accept food ~~instruments~~benefits and to provide supplemental food to WIC participants or proxies of WIC participants, includes both Above 50% and Regular Vendors.

"Vendor number" means the number assigned to a vendor by the department for ~~validating~~tracking food ~~instruments~~benefit redemptions.

"Vendor site" means a fixed and permanent location, operating as a business entity, listed in the WIC vendor application, which has been authorized by the department for purposes of delivery of WIC approved foods to WIC participants or the proxy of a WIC participant.

~~**"Vendor stamp"** means the stamp provided to a vendor by the department for validating food instruments.~~

"WIC food list" means the published list of State of Oklahoma authorized WIC approved foods.

"WIC approved foods" means those competitively priced foods which have been placed on the WIC food list, which have been determined by the department to be nutritionally qualified for the WIC Program in the state of Oklahoma.

~~**"WIC participant identification folder"** means the folder issued by a local agency to a participant for purposes of the WIC Program.~~

"WIC service chief" means the person responsible for the implementation and administration of the WIC Program.

"WIC vendor agreement" means an agreement signed by the WIC retail vendor and the department for the provision of WIC approved foods to participants.

"Women, Infants and Children Nutrition Program" or **"WIC"** means the federal special supplemental food program for women, infants and children authorized by Section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786).

PART 3. WIC VENDOR APPLICATION AND AUTHORIZATION PROCESS

310:410-3-10. Participant distribution and number of vendors

(a) Upon receipt of the application, the department shall utilize participant/vendor ratios and shall consider participant needs within geographical locations to determine if the applicant meets the county participant/vendor ratio to be eligible for selection.

(b) The participant/vendor ratio shall be calculated for the counties within the state of Oklahoma to determine the need for WIC retail vendors within such counties.

(1) The counties will be divided into two classifications:

(A) Urban Counties - Counties that have towns/cities located within their boundaries with a population of or 20,000 greater. The following counties are considered urban counties:

(i) Canadian
(ii) Carter
(iii) Cleveland
(iv) Comanche
(v) Garfield
(vi) Jackson
(vii) Kay
(viii) Muskogee
(ix) Oklahoma
(x) Payne
(xi) Pottawatomie
(xii) Stephens
(xiii) Tulsa
(xiv) Washington

(B) Rural Counties - Counties that have towns/cities located within their boundaries with a population of less than 20,000 or consist of sparsely populated areas. All counties not listed in (A) of this

paragraph as urban counties are considered rural counties.

(2) Participant/vendor ratios for the counties within Oklahoma shall be:

(A) Urban Counties - Greater than 200:1

(B) Rural Counties - Greater than 150:1

(3) If an applicant applies for WIC authorization in a county which exceeds the maximum participant/vendor ratio, the application shall be denied. An exception shall be granted when the applicant's charges to the department or shelf price, whichever is lower, for WIC approved foods are at least five percent (5%) below the department's ~~regional estimated~~ statewide average cost, and the applicant agrees to maintain these charges to the department at such level during the period of authorization or until the distance is such participant's access is restricted or the county becomes unsaturated.

310:410-3-11. Application procedures

The department shall provide an application for applying to become a WIC retail vendor. Submission of a completed application shall not constitute authorization to an applicant to accept or receive payment for food ~~instruments~~benefits. Any application submitted improperly or incompletely shall be returned to the applicant. Any application not completed and returned to the department within sixty (60) calendar days from receipt by the applicant shall not be processed. An applicant can apply for authorization to become a WIC retail vendor by submitting the following to the department:

(1) An application for WIC vendor authorization as a sole proprietorship shall include the following:

(A) identity and addresses of owner;

(B) owner's Social Security number;

(C) the Federal Employer Identification Number (FEIN) of the business entity;

(D) identification of any ownership interest of thirty percent (30%) or more in any other entity applying for WIC vendor authorization or WIC vendor, if requested by the department;

(E) identification of the business entity, the store type, location of the vendor site and an employee contact for WIC purposes;

(F) proof of the owner's Social Security number, if requested by the department;

(G) proof of the business entity's FEIN, if requested; and

(H) proof of USDA ~~Food Stamp~~Supplemental Nutrition Assistance Program (SNAP) authorization, if requested by the department.

(2) An application for WIC vendor authorization as a corporation shall include the following:

(A) identity and location of the corporation's principle place of business;

(B) identity and address of the corporation's registered agent;

(C) FEIN of the corporation;

(D) identification of an ownership interest of thirty percent (30%) or more by the stockholders and such an ownership interest by these stockholders in any other entity applying for WIC vendor authorization or WIC vendor, if requested by the department;

(E) identity of the business entity, store type and location of the proposed vendor site and an employee contact for WIC purposes;

(F) Certification of Incorporation from the state in which the applicant is incorporated, if requested by the state; and

(G) proof of USDA ~~Food Stamp~~SNAP authorization, if requested by the department.

(3) An application for WIC vendor authorization as a partnership or limited partnership shall include the following:

(A) identity and address of each limited and general partner and the registered agent;

(B) ownership percentages of each limited and general partner;

(C) Social Security number of each limited and general partner;

(D) FEIN of the partnership or limited partnership;

(E) information concerning any ownership interest of thirty percent (30%) or more by any limited or general partner;

(F) information concerning the business entity, store type and the location of proposed vendor site and an employee contact for WIC purposes;

(G) proof of Social Security numbers of each limited and general partner;

(H) proof of the partnership or limited partnership FEIN; and

(I) proof of USDA ~~Food Stamp~~SNAP authorization, if requested.

310:410-3-12. Authorization criteria and procedures

(a) Only WIC retail vendors authorized by the department shall be eligible to accept food ~~instruments~~benefits or otherwise provide supplemental foods to WIC participants. Any applicant seeking authorization to become a WIC retail vendor has an obligation to meet the following criteria before authorization. In addition, any approved vendor has a continuing obligation to meet the below listed criteria during the period of authorization:

(1) The vendor site shall be located within the boundary lines of the state of Oklahoma.

(2) The vendor site shall have a fixed and permanent location. This site shall be the address indicated on the WIC vendor application and shall be the location where a WIC participant or proxy shall select WIC foods during business hours.

(A) This site shall not be at an address or within any building where food ~~instruments~~benefits are distributed to WIC participants without written agreement from the State, i.e., extenuating circumstances, outreach, participant access, and/or rural areas. Provided, however, the Department retains the right to place a service location within the same building where food ~~instruments~~benefits are redeemed.

(B) The price charged to the WIC Program for WIC foods provided through participant requested delivery shall not exceed those prices charged to cash paying customers nor the prices posted at the vendor site. The vendor shall not charge for delivery of WIC foods.

(3) Each vendor site listed in the application shall have seventy percent (70%) or more gross receipts from the sale of products other than beer, hot foods and motor fuel.

(4) Authorization to participate in the USDA ~~Food Stamp Program~~SNAP or any other federal food program is not a prerequisite for authorization as a WIC retail vendor. If, however, an applicant or vendor has been authorized to participate in the USDA ~~Food Stamp Program~~SNAP or other federal food program, he shall not have been denied, suspended, disqualified, terminated, or assessed a civil money penalty during the two (2) years preceding application for authorization as a WIC retail vendor.

(5) Neither the applicant, vendor, nor any officers or officials shall have been involved in bribery as prohibited under Oklahoma Purchasing Act.

(6) Neither the applicant, vendor, its officers, directors, individual partners, nor their spouses or minor children who own more than seven and one-half percent (7 1/2%) ownership or beneficial interest in the business entity seeking authorization to participate in the WIC Program shall be employed by the state or county health departments directly or indirectly involved in the delivery or administration of WIC services.

(7) Neither the applicant, nor the vendor shall have been convicted of a misdemeanor involving fraud, misuse or theft of state or federal funds or of any felony. A certified copy of conviction may be offered and admitted into evidence as proof of such conviction.

(8) Neither the applicant, vendor, nor any owner of thirty percent (30%) or more ownership shall have been terminated from the WIC Program in the previous two (2) years.

(9) The applicant or vendor shall adhere to the provisions of the USDA WIC Regulations and this part.

(b) Applicants shall be authorized as WIC retail vendors based upon the following:

(1) An application and all supporting documents shall be properly completed and verified by the department. No application shall be deemed complete unless it includes all necessary supporting documents required by this part.

(2) The applicant's proposed vendor site may be initially inspected by the department.

(A) The department may conduct an initial inspection of the proposed vendor site after receipt of a completed application. Such inspection shall determine whether the applicant has the minimum quantities, sizes, and types of WIC foods and shall verify any business or financial information submitted by the applicant.

(B) If the inspection discloses that the applicant's proposed vendor site does not have the minimum quantities, sizes, or types of WIC foods necessary, or that business or financial information supplied by the applicant is erroneous, inaccurate, or insufficient, the department shall advise the applicant of the deficiencies and conduct another inspection of the vendor site.

(C) If the second inspection by the department discloses that the applicant's proposed vendor site does not meet the minimum quantities, sizes, and types of WIC foods or if business or financial information supplied by the applicant remains erroneous, inaccurate or insufficient, the application shall be denied.

(3) The minimum quantities, sizes, and types of WIC foods necessary at a vendor site are those specified in the WIC Vendor Agreement. A copy of this list shall be provided to each applicant and approved vendor.

(4) The department shall complete a retail vendor price survey of WIC foods during the initial inspection by collecting the lowest posted shelf prices for WIC foods. If the regular vendor applicant's prices are ten percent (10%) above the average prices in the same peer group for WIC foods, the application shall be denied. If the above 50% WIC vendor applicant's prices are above the average prices for their required peer group prices, the application shall be denied.

(5) The applicant shall be notified by the department within sixty (60) calendar days, whether or not the inspection or the proposed vendor site, the business, the financial, or other information provided by the applicant meet the criteria set forth in this part. If the applicant meets such criteria, he shall be notified of approval to attend the initial retail vendor training course.

310:410-3-14. Criteria for denial of initial authorization

A determination by the Commissioner of Health or designee to deny initial authorization shall be based upon a finding that one (1) or more of the following criteria are met:

(1) The applicant has not met the requirements of the USDA WIC Regulations or this part.

(2) The applicant has submitted false, erroneous, or inaccurate information on the application, or in the business or financial information provided to the department or during the course of the initial on-site inspection of the proposed vendor site.

(3) The applicant has refused to allow the department access to inspect the proposed vendor site during the applicant's normal business hours.

(4) The applicant has submitted a FEIN or Social Security number for the business entity to be operated at the proposed vendor site which is not the same FEIN or Social Security number filed for the same business entity with the USDA ~~Food Stamp Program~~SNAP and/or with the Oklahoma Tax Commission.

(5) The applicant does not have the necessary local, municipal, or village license to operate as a business entity at the proposed vendor site.

(6) The applicant has previously been authorized as a WIC vendor and the applicant's charges as a vendor for WIC approved foods, for a minimum of three (3) months during the agreement period, were~~:~~

~~(A) more than the department estimated costs for those WIC approved foods as reflected in the vendor price survey; or~~

~~(B)~~ at least ten percent (10%) or greater than the average charges submitted by other vendors of the same peer group.

~~(7) The applicant has previously been authorized as a WIC vendor and the applicant had more than one percent (1%) of all food instruments submitted to the contract bank, rejected per month for a maximum of three (3) months during an agreement period.~~

PART 5. WIC VENDOR EDUCATION

310:410-3-20. Initial WIC retail training by the Department

(a) An initial WIC retail training course shall be provided to vendor applicants who have met the criteria in Part 3 of this Subchapter. All vendor sites shall send a representative listed on the application to such training course except as provided for by the department.

(b) The initial WIC retail training course shall include, but shall not be limited to the following:

(1) the purpose of the WIC Program,

(2) certification of WIC participants,

(3) responsibilities of the WIC retail vendor,

(4) minimum quantities,

(5) sizes and types of authorized WIC approved foods,

(6) food ~~instrument~~benefit processing and transactions,

(7) USDA WIC Regulations and the provisions of this part,

(8) monitoring and compliance visits,

(9) WIC fraud and abuse provisions,

(10) potential sanctions to vendors,

(11) collection of overcharges,

(12) the vendor's responsibility for maintenance of purchasing records,

(13) procedures for WIC participant,

(14) vendor or public complaints,

(15) the WIC vendor agreement, and

(16) completion of the retail vendor price survey.

(c) All applicants or their representatives at the initial retail training course shall sign a roster indicating their attendance.

(d) At the end of the initial retail training course, each applicant or the applicant's representative shall sign a certification of understanding of the WIC Program.

PART 7. WIC VENDOR AUTHORIZATION AND RESPONSIBILITIES

310:410-3-33. Food instrument processing [REVOKED]

~~The vendor shall submit food instruments for payment for the provision of WIC supplemental foods in the following manner:~~

~~(1) The vendor shall ask the WIC participant or proxy for the WIC participant identification folder and the WIC food instrument.~~

~~(2) The vendor shall not accept a food instrument that is signed before the vendor fills in the actual amount of sale.~~

~~(3) The food instrument shall be accepted only within the time limits specified on the food instrument.~~

~~(4) The vendor shall ensure that the food items that the participant or proxy chooses to obtain from the food items listed on the food instrument, are authorized WIC foods and are the food items stated on the food instrument.~~

~~(5) The vendor shall write the actual total shelf price or less on the food instrument. The food instrument shall be signed by the WIC participant or the approved proxy. Both of these actions shall take place at the vendor site unless the transaction is a participant or proxy requested delivery. The vendor shall not obtain the participant/proxy signature until after the actual amount of sale is put on the food instrument.~~

~~(6) The vendor shall verify the signature on the WIC participant identification folder against the signature on the food instrument, as either the name of a participant or a proxy. If the vendors finds any variation in the signatures, the vendor may request from the participant or proxy an additional form of identification with the participant's or proxy's signature. If the participant or proxy does not have another form of identification, the vendor may refuse the participant's or proxy's request to obtain the food.~~

~~(7) The vendor shall use the authorized stamp to imprint the assigned four (4) digit vendor number on the food instrument in the space indicated.~~

~~(8) The vendor shall deposit the food instrument in a local financial institution within thirty (30) days from the "Last Day to Use" printed on the food instrument.~~

~~(9) Any food instrument improperly completed by the vendor shall be rejected.~~

310:410-3-34. Specifications for rejection of food instruments [REVOKED]

~~(a) Food instruments shall be rejected for payment for the following reasons:~~

~~(1) Submission of a food instrument before the "First Day to Use."~~

~~(2) Submission of a food instrument for payment more than thirty (30) calendar days past the "Last Day to Use."~~

~~(3) Submission of a food instrument identified by the department or the department's fiscal processor as invalid vendor.~~

~~(4) Submission of a food instrument by an unauthorized vendor, or submission of a food instrument which has an unauthorized, inaccurate, or missing vendor number.~~

~~(5) Submission of a food instrument without a participant or proxy signature.~~

~~(6) Submission of a food instrument whose value is greater than the maximum value amount of the food instrument.~~

~~(7) Submission of a food instrument which has been altered.~~

~~(b) Food instruments presented to the department's contract bank without the participant's signature, with a missing, inaccurate, or invalid vendor number, or submitted for payment before the "First Day to Use," altered food instruments, or food instruments which have not been obligated by the local agency (stolen stock) shall not be paid. Appeal procedures for food instruments rejected as "invalid vendor" are:~~

~~(1) A notarized letter of request for payment shall be sent to the department with copies of the rejected food instruments. This letter shall state that the actual dollar value on each food instrument which the vendor intends to resubmit, does not exceed the original actual amount of sale which was indicated on the food instrument at the first presentation to the fiscal processor. This request shall be postmarked within fifteen (15) days from the first presentation of the food instruments at the department's contract bank.~~

~~(2) The vendor shall pay the department a non-refundable processing fee of fifteen dollars ($15) per occurrence, submission of food instrument(s) on a specific date, and three dollars ($3) for each rejected food instrument resubmitted. The cashier's check or money order shall be made payable to the Oklahoma State Department of Health WIC Program and shall accompany the notarized letter and the copy of the food instruments which the vendor is requesting clearance to resubmit.~~

~~(3) The department shall review the request and the food instruments for the actual amount of sale and the date of presentation at the contract bank. If the food instruments pass review, the department shall send a certified letter of clearance to the vendor, which shall provide seven (7) calendar days in which the contract bank is authorized by the department to accept the food instruments for resubmission.~~

~~(c) Excessive rejection of food instruments may be grounds for denial of authorization of the vendor's agreement.~~

310:410-3-35. WIC retail vendor responsibilities

(a) The vendor shall monitor the WIC approved foods approved by the USDA and shall furnish only the prescribed quantities, types and brands of food specified on the food ~~instrument~~benefit. Pharmacies or drug stores shall be exempt from the minimum stock requirement. However, these establishments must have the ability to supply special formula in the necessary quantities upon request within twenty-four (24) hours.

(b) ~~The vendor shall accept food instruments only within the time limits indicated on the food instruments and shall not receive payment for food instruments submitted before the "First Day to Use" or after the "Last Day to Use."~~

~~(c) The vendor shall be responsible for payment and replacement of a lost, stolen or destroyed vendor number stamp.~~

~~(d)~~ The vendor shall display the price of WIC approved foods charged to the general public in clear view of customers, identifying the price of the specific WIC food item.

(~~e~~c) The vendor shall provide WIC approved foods to participants or proxies at the same price or less than the price charged to non-WIC customers.

(~~f~~d) The vendor shall accept food ~~instruments~~benefits only from WIC participants, proxies or representatives of the department~~who present a WIC participant folder with the appropriate authorized signatures~~.

(~~g~~e) The vendor shall not issue a WIC participant or proxy any document (e.g., rain check) purporting to give the WIC participant or proxy the right to buy a WIC food item or non-WIC food item after the food ~~instrument~~benefit is ~~signed~~processed by the participant or proxy. The vendor shall not exchange any WIC food item unless authorized by a department representative.

(~~h~~f) The vendor shall charge the department sale prices. The value of coupons and discounts shall be deducted from the price charged to the department. The participant shall not be given cash for the difference.

(~~i~~g) The vendor shall participate in an annual WIC training program.

(~~j~~h) The vendor shall be responsible for all food ~~instruments~~benefits accepted and processed for payment by current and former employees at the vendor site. The vendor shall also be responsible for the accuracy of any information submitted to the department by such employees. The vendor shall be responsible for reviewing food ~~instruments~~benefits which have been accepted to make certain that the total cost does not exceed the posted shelf prices or the prices charged to non-WIC customer.

(~~k~~i) The vendor shall abide by the USDA WIC Regulations and this part.

(~~l~~j) The vendor and his business entity shall be subject to audit by the department or USDA for the time period covering any present or previous authorization. The vendor shall maintain all records of purchases, gross sales receipts, and invoices of all WIC and non-WIC approved foods for a period not less than three (3) years. The original of such records shall be made available to the department or USDA upon reasonable request. ~~The vendor shall also provide the department and USDA the opportunity to inspect all food instruments located at the vendor site or under the control of the vendor.~~

(~~m~~k) The vendor shall respond truthfully and accurately to department initiated requests for retail vendor price surveys, verification of ownership of the business entity or vendor site, proof of WIC and non- WIC purchases and sales, and proof of the volume of alcoholic beverage sales. Such responses shall be in writing and be provided within fifteen (15) calendar days of receipt of the department's request.

(~~n~~l) The vendor shall maintain all refrigerated areas at a temperature of forty degrees Fahrenheit (40°F) or below, and no WIC approved foods shall exceed the expiration date printed on the food item.

(~~o~~m) The vendor shall not exchange food ~~instruments~~benefits for any form of currency, or other items of value, nor provide the participant with any amount of currency or coin as change from a partial WIC food transaction.

(~~p~~n) The vendor shall not seek restitution from WIC participants for food ~~instruments~~benefits not paid by the department

or fines levied by the department, a financial institution or the department's fiscal processor. The vendor shall not seek or receive restitution from the department for monetary penalties for rejected food ~~instruments~~benefits.

(~~q~~o) The vendor shall not charge sales taxes for WIC approved foods, as the department is exempt from such tax.

(~~r~~p) The vendor shall reimburse the department for any food ~~instruments~~benefits redeemed in violation of the USDA WIC Regulations, this part, or the WIC vendor agreement.

(~~s~~q) Neither authorization as a WIC vendor nor the WIC vendor agreement constitutes employment between the vendor and the department as a state employee or provides eligibility for any employee benefits provided by the state of Oklahoma.

(~~t~~r) The vendor shall offer the same courtesies to WIC participants as offered to other customers.

(~~u~~s) When material information included in the vendor's application changes, the vendor, by certified mail, shall notify the department in writing within thirty (30) calendar days.

(~~v~~t) The vendor shall not deny a participant any WIC approved foods indicated on the food ~~instrument~~benefit which the vendor has in stock.

310:410-3-40. Assignment or transfer

The vendor shall not sell, assign, or transfer in any manner the authorization, the WIC vendor agreement, ~~the WIC vendor stamp,~~ or the WIC vendor number. Any actual or attempted sale, assignment or transfer of the above shall be considered a breach of the WIC vendor agreement. The death of a vendor (if an individual) or the voluntary or involuntary dissolution of a vendor corporation, partnership, limited partnership, unincorporated association, or firm shall cause the vendor's authorization and the WIC vendor agreement to expire. The vendor has an affirmative duty to notify the department, in writing, at the place listed in the WIC vendor agreement, fifteen (15) calendar days in advance of any scheduled sale, lease, bankruptcy, or cessation of the vendor's business entity, or the sale of any majority interest of any corporation or partnership.

PART 9. WIC VENDOR COMPLIANCE AND SANCTIONS

310:410-3-51. Violations

(a) Violations shall be classified as either Class A violations, Class B violations, or Class C violations. Each class of violation is listed below.

(b) **Mandatory Vendor Sanctions**

(1) Class A violations:

(A) A vendor convicted of trafficking in food ~~instruments~~benefits or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of Controlled Substances Act (21 U.S.C. 802) in exchange for food ~~instruments~~benefits;

(B) Permanent disqualification, disqualification or suspension from participation in the USDA ~~Food Stamp Program~~SNAP, or imposition of a civil money penalty by the ~~Food Stamp Program~~SNAP;

(C) One incidence of buying or selling food ~~instruments~~benefits for cash (trafficking);

(D) One incidence of selling firearms, ammunition, explosives, or controlled substances in exchange for food ~~instruments~~benefits;

(E) One incidence of sale of alcohol or alcoholic beverages or tobacco products in exchange for food ~~instruments~~benefits;

(F) A pattern of claiming reimbursement for sale of an amount of a specific WIC food item which exceeds the store's documented inventory of that WIC food item for a specific period of time;

(G) A pattern of charging WIC participants, proxies, or department representatives more for WIC food than non-WIC customers, or charging more than the current shelf or agreement price;

(H) A pattern of receiving, transacting and/or redeeming food ~~instruments~~benefits outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

(I) A pattern of charging for WIC food not received by the participant, proxy, or department representatives;

(J) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments~~benefits;

(K) A pattern of providing unauthorized food items in exchange for food ~~instruments~~benefits, including charging for WIC food provided in excess of those listed on the food ~~instrument~~benefit;

(c) **State Vendor Violations**

(1) Class B violations:

(A) ~~Failure to maintain the minimum stock requirements as specified in the WIC vendor agreement, and/or having any expired WIC approved foods on the shelf;~~

~~(B)~~ Requiring a participant to select a different type or brand of WIC approved foods when not specified on the food instrument;

(~~C~~B) Failure to post current shelf prices for WIC approved foods;

~~(D) Accepting any remuneration for the difference between the maximum value of the food instrument and the shelf price of the WIC approved foods;~~

(~~E~~C) Seeking restitution from WIC participants for food ~~instruments~~benefits not paid by the department or fines levied by the department, a financial institution, or the department's fiscal processor;

(~~F~~D) Failure to attend an annual retail vendor training program;

(~~G~~E) Refusing to allow participants, proxies or department representatives to take any~~all~~ food items listed on the food ~~instrument~~benefit;

~~(H) Altering or submitting for payment altered food instruments;~~

~~(I) Acceptance of a food instrument that was signed by the participant, proxy, or department representative before the total actual cost was filled in by the vendor.~~

(2) Class C violations:

(A) Failure to submit retail vendor price surveys requested by the department;

(B) Failure to submit information requested by the department within the time period specified by the department.

(C) ~~Failure to utilize OSDH supplied shelf talkers to identify WIC approved foods.~~Failure to maintain the minimum stock requirements as specified in the WIC vendor agreement, and/or having any expired WIC approved foods on the shelf.

310:410-3-52. WIC vendor sanctions

Any Class A or B violation shall subject the vendor to reimburse the department for any overcharges, charges for items not received by WIC participants, and monies paid for products not authorized as WIC approved foods.

(1) Any Class A violation shall constitute grounds for disqualification of authorization to the WIC Program. If the department determines that disqualification of the vendor would result in inadequate participant access, the department shall impose a civil money penalty in lieu of disqualification. The length of each disqualification is listed below.

(A) Permanent disqualification: A vendor convicted of trafficking in food ~~instruments~~benefits or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of Controlled Substances Act (21 U.S.C. 802) in exchange for food ~~instruments~~benefits.

(B) Six-year disqualification:

(i) One incidence of buying or selling food ~~instruments~~benefits for cash (trafficking); or

(ii) One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments~~benefits.

(C) Three-year disqualification:

(i) One incidence of sale of alcohol or alcoholic beverages or tobacco products in exchange for food ~~instruments~~benefits; or

(ii) A pattern of claiming reimbursement for sale of an amount of a specific WIC food item which exceeds the store's documented inventory of that WIC food item for a specific period of time; or

(iii) A pattern of charging participants more for WIC food than non-WIC customers or charging participants more than the current shelf or agreement price; or

(iv) A pattern of receiving, transacting and/or redeeming food ~~instruments~~benefits outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; or

(v) A pattern of charging for WIC food not received by the participant, proxy, or department representatives; or

(vi) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food ~~instruments~~benefits.

(D) One-year disqualification: A pattern of providing unauthorized food items in exchange for food ~~instruments~~benefits, including charging for supplemental foods provided in excess of those listed on the food ~~instrument~~benefit.

(E) Disqualification period equal to ~~Food Stamp Program~~SNAP disqualification:

(i) Permanent disqualification, disqualification or suspension from participation in the USDA ~~Food Stamp Program~~SNAP, or imposition of a civil money penalty by ~~the Food Stamp Program~~SNAP;

(ii) Such sanction shall not be subject to administrative or judicial review under the WIC program.

(F) Voluntary withdrawal or non-renewal of agreement:

(i) The department shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for violations listed in this section, but shall enter the disqualification on the record; or

(ii) The department shall not use non-renewal of the vendor agreement as an alternative to disqualification.

(G) Civil Money Penalty (For each violation subject to a mandatory sanction):

(i) The department shall impose a Civil Money Penalty in lieu of WIC Program disqualification if such disqualification of the vendor would result in inadequate WIC participant access.

(ii) The civil money penalty shall not exceed $~~11,000~~15,041 for each violation and shall not exceed $~~44,000~~60,141 for a single investigation.

(2) Any Class B violation shall constitute grounds for the following sanctions:

(A) For the first Class B violation, the WIC retail vendor shall be given written notice of the violation and shall be given an administrative warning.

(B) For the second Class B violation committed within one (1) year of the first Class B violation, the vendor shall be subject to a fine assessment of five hundred dollars ($500). The vendor shall also be required to attend a compliance training workshop.

(C) The third Class B violation committed within two (2) years of the first Class B violation shall subject the vendor to a fine assessment of one thousand dollars ($1,000).

(D) The fourth Class B violation committed within two (2) years of the first Class B violation shall be grounds for termination of the vendor authorization, and ~~to~~ a fine assessment of two thousand, five hundred dollars ($2,500).

(3) Any Class C violation shall constitute issuance of an administrative warning. Five (5) Class C violations within a one (1) year period shall be grounds for termination of the vendor authorization for a period of one (1) year.

(4) Second mandatory sanction, a vendor, who previously has been assessed a sanction for any of the violations listed in this part, receives another sanction for any of these violations, the department shall double the sanction.

(5) Third or subsequent mandatory sanction, a vendor, who previously has been assessed two or more sanctions for any of the violations in this part, receives another sanction for any of these violations, the department shall double the third sanction and all subsequent sanctions. The department shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in this part.

(6) The time period shall commence from the time the notice of violation, termination, or fine assessment is issued by the department.

(7) All fine assessments shall be paid by cashier certified check or money order in United States currency.

310:410-3-53. Criteria for termination of authorization and fine assessment

(a) A determination by the Commissioner of Health or designee to terminate authorization and impose a fine assessment shall be based upon a finding that one (1) or more of the following criteria are met:

(1) the vendor has not met one (1) or more requirements of the USDA WIC Regulations or the provisions of this part;

(2) the vendor has submitted false, erroneous, or inaccurate information on the application, in the business or financial information provided to the department, on the retail vendor price survey, or during the course of inspections of the vendor site;

(3) the vendor has refused to allow the department access to inspect the vendor site during normal business hours;

(4) the vendor has been found by the department to have violated provisions of this Chapter;

(5) the vendor has submitted a Federal Employer's Identification Number (FEIN) for the business entity operating as a vendor which differs from the FEIN filed for the same business entity with the USDA ~~Food Stamp Program~~SNAP, or with the Oklahoma Tax Commission;

(6) the vendor has not fulfilled the terms of the WIC vendor agreement;

(7) the vendor has sold, leased, or discontinued the business entity or moved the business entity to a new location or new address; or

(8) the vendor corporation, partnership, or limited partnership has been voluntarily or involuntarily dissolved or ~~that~~ the vendor sole proprietor has died.

(b) In deciding upon the punishment to be imposed, the department or its designee shall take into consideration the nature of the offense alleged to have been committed, the evidence regarding deliberate, as opposed to inadvertent conduct, the number of previous violations committed by the vendor, and such other evidence as may be relevant to imposition of punishment.

[OAR Docket #19-667; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING

[OAR Docket #19-668]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Disease and Injury Reporting
310:515-1-1.1. Definitions [AMENDED]
310:515-1-3. Diseases and conditions to be reported immediately [AMENDED]
310:515-1-4. Additional diseases, conditions, and injuries to be reported [AMENDED]
310:515-1-7. Control of Communicable Diseases Manual [AMENDED]
310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory [AMENDED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 63 O.S. § 1-501 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposal updates the existing rules in accordance with recommendations from the Council of State and Territorial Epidemiologists (CSTE), the Centers for Disease Control and Prevention, and local health care partners pertaining to reportable diseases and injuries. The proposal amends the lists of reportable diseases and injuries, in order to clarify those conditions and diseases that are required to be reported to the Department. The proposal revises the list of conditions of public health importance that require investigation and implementation of prevention activities and time frames for required reporting or submission of isolates and/or appropriate clinical specimens, including moving tularemia from

immediately notifiable to reporting within one working day; updating Rocky Mountain spotted fever (*Rickettsia rickettsii*) to Spotted Fever Rickettsiosis (*Rickettsia spp.*) and restricting report of Spotted Fever Rickettsiosis cases to associated-hospitalizations and deaths; adding Cyclospora to reporting within one working day; adding poisonings to the list of injuries; requiring all laboratories and providers to report both positive and negative test results for syphilis, HIV/AIDS, hepatitis B, and hepatitis C performed on babies (defined as 18 months and younger); requiring isolates of carbapenemase-resistant *Pseudomoas aeruginosa* and carbapenemase-resistant *Acinetobacter* spp. to be submitted to the PHL and stipulate submission of required isolates and/or appropriate clinical specimens to the Oklahoma State Department of Health Public Health Laboratory within 48 hours. These changes minimally increase the reporting burden placed upon clinicians, have no impact on the reporting burden placed upon laboratories, and do not adversely affect the public health disease control and prevention activities.

The proposal removes the reference to a "non-versioned/non-codified" document which could further specify requirements of reporting. This change will eliminate any possibility of requirements that are not stated in rule. The duplicative requirements at OAC 310:515-1-4(3) (relating to occupational or environmental diseases) are amended by removing the requirements listed here and adding a reference to the amended rules on reporting blood lead levels at OAC 310:512, Childhood Lead Poisoning Prevention Rules. The proposal removes the reference to "hospitalized and fatal cases only" for injury reporting. This proposal changes the current reporting guidance for hepatitis C to include persons of all ages, and lowers the alanine aminotransferase (ALT) levels for reporting from 400 to 200. This modification is in accordance with the CSTE case definition for hepatitis C that was revised effective January 1, 2016. Lastly, the proposal will more clearly specify which syphilis tests are required for reporting to the Department.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. DISEASE AND INJURY REPORTING

310:515-1-1.1. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"AFB" means Acid Fast Bacillus.

"AIDS" means Acquired Immunodeficiency Syndrome.

"ALT" means alanine aminotransferase.

"Anti-HAV-IgM+" means a positive test result for the hepatitis A virus ~~immunglobulin~~immunoglobulin M antibody.

"Anti-HBc-IgM+" means a positive test result for the hepatitis B core ~~immunglobulin~~immunoglobulin M antibody.

"CD4" means cluster of differentiation 4 glycoprotein that serves as a receptor for HIV on T helper cells.

"CIDT" means culture independent diagnostic test system/panel used to detect multiple pathogens.

"Department" or **"OSDH"** means the Oklahoma State Department of Health.

"E. coli" means *Escherichia coli*.

"EDTA" means Ethylenediaminetetraacetic acid.

"EIA" means enzyme immunoassay.

"HBeAg+" means a positive test result for the hepatitis B "e" antigen.

"HBsAg+" means a positive test result for the hepatitis B surface antigen.

"HBV DNA+" means a positive test result for deoxyribonucleic acid of the hepatitis B virus.

"HIV" means Human Immunodeficiency Virus.

"PHIDDO" or **"PHIDDO system"** means Public Health Investigation and Disease Detection of Oklahoma system.

"NAT for HCV RNA+" means a positive nucleic acid amplification test ~~with a positive test~~ result for hepatitis C virus ribonucleic acid.

"Novel Influenza A" means an influenza A virus not endemic, not routinely circulating, or for which there is little to no pre-existing immunity, e.g., influenza A H3N2 variant, H5N1, H5N2, H7N3,or H7N9.

"Outbreak of disease" means two or more cases residing in different households that have a similar clinical syndrome of a potentially infectious disease, toxin, or agent of known or unknown etiology.

"RIBA" means recombinant immunoblot assay.

"S/co" means the signal-to-cut-off ratio.

"Spp." is an abbreviation referring to the term "species," and is used to broaden the anteceding term in order to include all organisms that may be found or described within a given genus.

"Unusual disease or syndrome" means a case of an uncommon, possibly infectious disease of known or unknown etiology, even if laboratory testing may be pending or inconclusive, or if testing for common etiologies is negative. Such cases of disease may not normally be endemic to Oklahoma, may represent ~~be an~~ emerging or re-emerging disease, and/or ~~represent diseases~~disease for which a public health intervention may be needed. Examples of such unusual diseases or syndromes include but are not limited to, unexplained adult respiratory distress syndrome, rash illness with atypical presentation, or an illness occurring along with an unusual pattern of illness or death among animals.

310:515-1-3. Diseases and conditions to be reported immediately

The following diseases/conditions associated with humans must be reported by any health practitioner or laboratory personnel to the OSDH electronically via the secure, web-based ~~Public Health Investigation and Disease Detection of Oklahoma~~PHIDDO system or by telephone (405-271-4060 or 800-234-5963) immediately upon suspicion, diagnosis, or testing.

(1) Anthrax (*Bacillus anthracis*).

(2) Bioterrorism - suspected disease.

(3) Botulism (*Clostridium botulinum*).

(4) Diphtheria (*Corynebacterium diphtheriae*).

(5) Free-living amebae infections causing primary amebic meningoencephalitis (*Naegleria fowleri*).

(6) Hepatitis B during pregnancy (HBsAg+).

(7) Measles (Rubeola).

(8) Meningococcal invasive disease (*Neisseria meningitidis*).

(9) Novel coronavirus.
(10) Novel influenza A.
(11) Outbreaks of apparent infectious disease.
(12) Plague (*Yersinia pestis*).
(13) Poliomyelitis.
(14) Rabies.
(15) Smallpox.
~~(16) Tularemia (*Francisella tularensis*).~~
(~~17~~16) Typhoid fever (*Salmonella* Typhi).
(~~18~~17) Viral hemorrhagic fever.

310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

(1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via the PHIDDO system, telephoned, or submitted via secure electronic data transmission to the OSDH within one (1) working day (Monday through Friday, state holidays excepted) of diagnosis or positive test.

(A) Acid Fast Bacillus (AFB)-positive smear. Report only if no additional testing is performed or subsequent testing is indicative of *Mycobacterium tuberculosis* Complex.
(B) AIDS~~(Acquired Immunodeficiency Syndrome)~~.
(C) *Anaplasma phagocytophilum* infection.
(D) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus, chikungunya virus, Zika virus).
(E) Brucellosis (*Brucella* spp.).
(F) Campylobacteriosis *(Campylobacter* spp.).
(G) Congenital rubella syndrome.
(H) Cryptosporidiosis (*Cryptosporidium* spp.).
(I) Cyclosporiasis (*Cyclospora cayetanensis*).
(~~I~~J) Dengue Fever.
(~~J~~K) *E. coli O157, O157:H7,* or a Shiga toxin-producing *E. coli*.
(~~K~~L) Ehrlichiosis (*Ehrlichia* spp.).
(~~L~~M) *Haemophilus influenzae* invasive disease.
(~~M~~N) Hantavirus infection, without pulmonary syndrome.
(~~N~~O) Hantavirus pulmonary syndrome.
(~~O~~P) Hemolytic uremic syndrome, postdiarrheal.
(~~P~~Q) Hepatitis A infection (Anti-HAV-IgM+).
(~~Q~~R) Hepatitis B infection. If any of the following are positive, then all test results on the hepatitis panel must be reported: HBsAg+, anti-HBc-IgM+, HBeAg+, or HBV DNA+~~then report results of the entire hepatitis panel~~. For infants < or = 18 months, all hepatitis B related tests ordered, regardless of test result, must be reported.
(~~R~~S) Hepatitis C infection in persons having jaundice or ALT > or = 200 with laboratory confirmation. If hepatitis C EIA is confirmed by NAT for HCV RNA, or ~~signal-to-cut-off (~~ s/co ~~)~~ ratio or index is predictive of a true positive then report results of the entire hepatitis panel. For infants < or = 18 months, all hepatitis C related tests ordered, regardless of test result, must be reported.
(~~S~~T) ~~Human Immunodeficiency Virus (~~HIV~~) infection~~. For infants < or = 18 months, all HIV related tests ordered, regardless of test result, must be reported.
(~~T~~U) Influenza-associated hospitalization or death.
(~~U~~V) Legionellosis (*Legionella* spp.).
(~~V~~W) Leptospirosis (*Leptospira interrogans)*.
(~~W~~X) Listeriosis (*Listeria monocytogenes*).
(~~X~~Y) Lyme disease (*Borrelia burgdorferi*).
(~~Y~~Z) Malaria (*Plasmodium* spp.).
(~~Z~~AA) Mumps.
(~~AA~~BB) Pertussis (*Bordetella pertussis*).
(~~BB~~CC) Psittacosis (*Chlamydophila psittaci*).
(~~CC~~DD) Q Fever (*Coxiella burnetii*).
~~(DD) Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).~~
(EE) Rubella.
(FF) Salmonellosis (*Salmonella* spp.).
(GG) Shigellosis (*Shigella* spp.).
(HH) Spotted Fever Rickettsiosis (*Rickettsia* spp.) hospitalization or death.
(~~HH~~II) Streptococcal disease, invasive, Group A (GAS) (*Streptococcus pyogenes*).
(~~II~~JJ) *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.
(~~JJ~~KK) Syphilis (*Treponema pallidum*). Nontreponemal and treponemal tests are reportable. If any syphilis test is positive, then all syphilis test results on the panel must be reported. For infants < or = ~~12~~ 18 months, all syphilis tests ordered, regardless of test result, must be reported.
(~~KK~~LL) Tetanus (*Clostridium tetani*).
(~~LL~~MM) Trichinellosis (*Trichinella spiralis*).
(~~MM~~NN) Tuberculosis (*Mycobacterium tuberculosis*).
(OO) Tularemia (*Francisella tularensis*).
(~~NN~~PP) Unusual disease or syndrome.
(~~OO~~QQ) Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium* spp., and other genera in the family).
(~~PP~~RR) Yellow Fever.

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH within one (1) month of diagnoses or test result.

(A) CD4 cell count with corresponding CD4 cell count percentage of total (by laboratories only).
(B) Chlamydia ~~infections~~ (Chlamydia trachomatis).
(C) Creutzfeldt-Jacob disease
(D) Gonorrhea (Neisseria gonorroeae).

(E) HIV viral load (by laboratories only).

(3) **Occupational or ~~Environmental~~environmental diseases.** Laboratories and health care providers must report blood lead level results pursuant to the requirements established in Title 310, Chapter 512, Childhood Lead Poisoning Prevention Rules.

(4) **Injuries~~(hospitalized and fatal cases only)~~.**

(A) Burns.

(B) Drownings and ~~Near~~ near ~~Drownings~~ drownings.

(C) Traumatic ~~Brain~~brain ~~Injuries~~injuries.

(D) Traumatic ~~Spinal~~spinal ~~Cord~~cord ~~Injuries~~injuries.

(E) Poisonings, including toxic and adverse effects.

310:515-1-7. Control of Communicable Diseases Manual

The OSDH adopts the most recently published edition of the publication, "Control of Communicable Diseases Manual~~,~~", published by the American Public Health Association, as a guideline for the prevention and control of communicable diseases.

310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory

(a) Pure bacterial isolates ~~Isolates~~ of ~~or appropriate specimens of~~ the following organisms shall be sent to the OSDH Public Health Laboratory for additional characterization, typing or confirmation within two (2) working days (Monday through Friday, state holidays excepted) of final identification or diagnosis.

(1) *Bacillus anthracis*.

(2) *Brucella* spp.

(3) Carbapenem-resistant *Enterobacteriaceae*.

(4) Capbapenem-resistant *Pseudomonas aeruginosa*.

(5) Carbapenum-resistant *Acinetobacter spp*.

(~~4~~6) *E. coli 0157, 0157:H7*, or a Shiga toxin producing *E. coli*.

(~~5~~7) *Francisella tularensis*.

(~~6~~8) *Haemophilus influenza* (sterile site).

(~~7~~9) *Listeria monocytogenes* (sterile site).

(~~8~~10) *Mycobacterium tuberculosis*.

(~~9~~11) *Neisseria meningitides* (sterile site).

~~(10) Plasmodium spp.~~

(~~11~~12) *Salmonella spp*.

(~~12~~13) *Vibrionaceae* family (*Vibrio* spp. *Grimontia* spp., *Photobacterium* spp. And other genera in the family).

(~~13~~14) Yersinia spp.

(b) Following consultation with an OSDH epidemiologist, clinical specimens from suspected cases of Botulism must be sent to the OSDH Public Health Laboratory for testing.

(c) When *Plasmodium* spp. Is suspected by a healthcare provider, a Giemsa-stained (or other suitable stain) thin and thick, peripheral blood smear prepared from the EDTA should be submitted in addition to the EDTA purple top blood tube.

(d) Labratories unable to perform reflex culture to isolate/recover the following bacterial pathogens detected by CIDT assays shall submit positive CIDT stool samples in Cary Blair or modified Cary Blair transport media to the OSDH Public Health Laboratory within two (2) working days (Monday through Friday, state holidays excepted) of final CIDT result.

(1) E. coli 0157, 0157:H7, or a Shiga toxin-producing E.coli.

(2) *Salmonella spp.*

(3) *Vibrio spp.*

(4) *Yersinia spp.*

[OAR Docket #19-668; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 550. NEWBORN SCREENING PROGRAM

[OAR Docket #19-669]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
310:550-1-1. Purpose [AMENDED]
310:550-1-2. Definitions [AMENDED]
Subchapter 3. Testing of Newborns
310:550-3-1. Testing of newborns [AMENDED]
Subchapter 5. Specimen Collection
310:550-5-1. Specimen collection [AMENDED]
310:550-5-2. Technique for filter paper sample collection and pulse oximetry screening [AMENDED]
Subchapter 7. Hospital Recording
310:550-7-1. Hospital recording [AMENDED]
Subchapter 11. Advisory Committee
310:550-11-1. Advisory committee [AMENDED]
Subchapter 17. Follow-up for Physicians
310:550-17-1. Follow-up for physicians [AMENDED]
Subchapter 19. Reporting
310:550-19-1. Physician reporting and medical records [AMENDED]
Subchapter 21. Information
310:550-21-1. Information [AMENDED]
Subchapter 23. Standards, Procedures, and Follow-Up for Certified Laboratories
310:550-23-1. Procedures [AMENDED]
Appendix A. Instructions for Filter Paper Sample Collection [REVOKED]
Appendix B. Report Form [REVOKED]
Appendix C. Refusal Form [REVOKED]
Appendix D. Recommended Pulse Oximetry Screening Protocol [REVOKED]
Appendix E. Pulse Oximetry Screening Result Form [REVOKED]

AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 25 O.S. § 40; 63 O.S. § 1-533 (A).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019

COMMENT PERIOD:
February 15, 2019 through March 21, 2019

PUBLIC HEARING:
March 19, 2019

ADOPTION:
March 19, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:

310:550-1-1 - This section sets forth the purpose of the rule chapter. The amendments add spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease to the Newborn Screening testing panel. These conditions were included throughout several sections of the rules for consistency.

310:550-1-2 - The term "Mental Retardation" is replaced with "Developmental Disabilities". Pursuant to 25 O.S. § 40 statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. In order to promote consistency, it is necessary to amend all chapters that contain this terminology, even if those chapters do not equate persons with their condition. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

The changes remove the term "Prevention and Preparedness Services." The Newborn Screening Program no longer resides in that service area. Additionally, a few terms and definitions were added/remove/revised for clarity and references to appendices were removed. Those documents are publically available on the OSDH website.

310:550-3-1 - Spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease are added to the Newborn Screening testing panel. Reference to Appendix C, Newborn Screening Parent Refusal Form, was removed as that document will now be publically available on the OSDH website.

310:550-5-1 - The changes add language to include specimens collected at 24 hours of age require a repeat specimen to be recollected at 3-5 days of life. This was added to clarify that specimens collected at 24 hours of age are collected prior to the recommended time frame which is after 24 hours of age.

310:550-5-2 - These changes remove reference to Appendix A, Instructions for Filter Paper Sample Collection, and replaced it with name of standard document for newborn screening specimen collection. Also the reference to Appendix D, Recommended Pulse Oximetry Screening Protocol, was removed as that document will now be publically available on the OSDH website.

310:550-7-1 - The term "collection" is replaced with the term "form" for clarity and consistency when referring to the newborn screening from kit. Reference to Appendix A was removed as the image of the newborn screening form kit will publically available on the OSDH website. Reference to Appendix E, Pulse Oximetry Screening Result Form, was removed as that document will now be publically available on the OSDH website. Also reference to Appendix C, Newborn Screening Parent Refusal Form, was removed as that document will now be publically available on the OSDH website.

310:550-11-1 - The proposal replaces the Oklahoma Genetic Advisory Council with the Infant and Children's Health Advisory Council as the advising council to the Department.

310:550-17-1 - The changes add language to include specimens collected at 24 hours of age require a repeat screen. This was added to clarify that specimens collected at 24 hours of age are collected prior to the recommended time frame which is after 24 hours of age. Spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease are added to the Newborn Screening testing panel.

310:550-19-1 - The changes remove reference to Appendix B, Newborn Screening Program Report Form, as that document will now be publically available on the OSDH website. Spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease are added to the Newborn Screening testing panel.

310:550-21-1 - The changes remove the term "Prevention and Preparedness Services." The Newborn Screening Program no longer resides in that service area.

310:550-23-1 - The changes add language to include specimens collected at 24 hours of age.

Appendix A. Instructions for Filer Paper Sample Collection - Removed this appendix as the document will be publically available on the OSDH website.

Appendix B. Report Form -Removed this appendix as the document will be publically available on the OSDH website.

Appendix C. Refusal Form - Removed this appendix as the document will be publically available on the OSDH website.

Appendix D. Recommended Pulse Oximetry Screening Protocol - Removed this appendix as the document will be publically available on the OSDH website.

Appendix E. Pulse Oximetry Screening Result Form - Removed this appendix as the document will be publically available on the OSDH website.

Additional changes included minor grammatical changes. The impact of the rule change includes updating rule language, adding clarity for interpretation, and improving services for children living in Oklahoma.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

310:550-1-1. Purpose

Under 63 O.S., Sections 1-533 and 1-534 the following rules and regulations are established concerning the screening of all infants born in Oklahoma for the disorders of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), infants shall be screened for biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, ~~and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe~~ severe ~~Combined~~ combined ~~Immunodeficiency~~ immunodeficiency (SCID), spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease upon completion of laboratory validation studies, and establishment of short-term follow-up services,~~detectable via the Department's laboratory technology utilized in newborn screening~~ and ~~approved~~ approval by the Commissioner of Health. This chapter establishes the following rules and regulations concerning screening all infants born at a birthing facility in Oklahoma for critical congenital heart disease (CCDH) via pulse oximetry screening performed by the birthing facility pursuant to 63 O.S. Section 1-550.5.

310:550-1-2. Definitions

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

"Amino Acid Disorders" refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process amino acids properly due to a defective enzyme function. This causes an amino acid or protein build up in the

body. If not treated early in life these defects can cause ~~disability, mental retardation~~developmental disability or death. Each amino acid disorder is associated with a specific enzyme deficiency. Treatment depends on the specific amino acid disorder.

"Biotinidase Deficiency" means an inherited disease caused by the lack of an enzyme that recycles the B vitamin biotin, which if not treated may cause serious complications, including coma and death.

"Birth Defects Registry" means a registry established by the Commissioner of Health to monitor and track birth defects for all infants born in Oklahoma.

"Birthing Facility" means a facility that provides care during labor and delivery~~,~~ and ~~their~~ the newborn infant(s). This includes a unit of a hospital that is licensed and accredited to provide birthing services, or a freestanding birthing center.

"Certified Laboratory" refers to the Oklahoma State Public Health Laboratory and/or a laboratory approved by the Oklahoma State Department of Health to conduct newborn screening.

"CCHD Screening" means the screening test for the detection of critical congenital heart disease that ~~are~~is recommended by the United States Department of Health and Human Services.

"CLIA '88" means the Clinical Laboratory Improvement Amendments of 1988, public law 100-578. This amendment applies to the Federal Law that governs laboratories who examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

"Confirmatory Testing" means definitive laboratory testing needed to confirm a diagnosis.

"Congenital Adrenal Hyperplasia" or **"CAH"**~~will refer to~~ means the most common form of CAH, 21-hydroxylase deficiency. This genetic disorder is caused by the lack of an enzyme that the adrenal gland uses to process hormones. Serious loss of body salt and water can result in death. In girls the genitalia may appear as a male's, and can result in incorrect sex assignment. Hormone treatment is required for life.

"Congenital Hypothyroidism" means a disease caused by a deficiency of thyroid hormone (thyroxine) production, which if not treated leads to ~~mental~~developmental and physical ~~retardation~~disability.

"Critical Congenital Heart Disease" means a congenital heart defect that places an infant at significant risk for disability or death if not diagnosed soon after birth.

"Cystic Fibrosis" means a multisystem genetic disorder in which defective chloride transport across membranes causes dehydration of secretions. The result is a production of a thick, viscous mucus that clogs the lungs. This leads to chronic lung infections, fatal lung disease, and also interferes with digestion. Early detection and treatment can prevent malnutrition, and enhance surveillance and treatment of lung infections.

"Days of Age" means the age of a newborn in 24-hour periods so that a newborn is one day of age 24 hours following the hour of birth for both blood spot screening and pulse oximetry screening.

"Department" refers to the Oklahoma State Department of Health.

"Discharge" means release of the newborn from care and custody of a perinatal licensed health facility to the parents or into the community.

"Disorder" means any condition detectable by newborn screening that allows opportunities, not available without screening, for early treatment and management to prevent ~~mental retardation~~developmental disability and/or reduce infant morbidity and mortality.

"Echocardiogram" means a test that uses ultrasound to provide an image of the heart.

"Fatty Acid Oxidation Disorders" refers to a group of inherited metabolic conditions in which the body is unable to oxidize (breakdown) fatty acids for energy due to a defective enzyme function. If not treated early in life this defect may cause ~~mental retardation~~developmental disability or death.

~~**"Form Kit"** or **"Newborn Screening Form Kit"** is a FDA approved (or licensed) filter paper kit bearing a stamped lot number that has been approved by the Commissioner of Health. For an example of a FDA approved kit, see Appendix A, Oklahoma Health Department (OHD) Form Kit #450.~~

"Galactosemia" means an inherited disease caused by the body's failure to break down galactose due to a defective enzyme function, which if not treated early in life may cause ~~mental retardation~~developmental disability or death.

"Hemoglobin" means a protein in the red blood cell that carries oxygen.

"Hemoglobinopathy" means an inherited hemoglobin disorder.

"Infant" means a child 6 months of age and under.

"Infant's Physician" means the licensed medical or osteopathic physician listed by the submitter or the individual responsible for the medical care of the newborn.

"Initial Specimen" means the first blood specimen collected subsequent to birth, pursuant to these procedures.

"Long-term Follow-up" means follow-up services that begin with diagnosis and treatment and continues throughout the lifespan~~,~~. This ~~including~~includes parent education, networking, referral, and case coordination.

"Medical Home" means a Planned Health Care Provider.

"Medium-chain acyl coenzyme A dehydrogenase deficiency" or **"MCAD"** means a genetic disorder of fatty acid metabolism. This disorder can cause metabolic crisis when an infant/child fasts. This crisis can lead to seizures, failure to breathe, cardiac arrest and death. Treatment is effective by preventing fasting.

"Mucopolysaccharidosis Type I" or **"MPS I"** means a condition in which individuals are missing an enzyme to break down large sugar molecules. This disorder can impact many different organs and tissue leading to developmental delays if not identified and treated early.

"Newborn" means an infant thirty (30) days of age and under.

"Newborn Screening" or **"newborn screening tests"** means screening infants for the disorders of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain

acyl coenzyme A dehydrogenase deficiency (MCAD), biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, ~~and upon completion of laboratory validation studies and establishment of short-term follow-up services,~~ Severe Combined Immunodeficiency (SCID) spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease upon completion of laboratory validation studies, ~~and~~ establishment of short-term follow-up services, ~~detectable via the Department's laboratory technology utilized in newborn screening~~ and ~~approved~~ approval by the Commissioner of Health.~~and~~ Also includes ~~Critical~~ critical congenital heart disease (CCHD) via pulse oximetry screening conducted by birthing facilities on all newborns born in the state of Oklahoma.

"Newborn Screening Form Kit" or **"Form Kit"** means an approved by the Department for collection of the newborn screening specimen.

"Newborn Screening Laboratory" means a laboratory operated by the Department or a laboratory certified by the Department to conduct the tests and carry out the follow-up required by these procedures.

"Newborn Screening Program" or **"The Program"** refers to the Public Health Laboratory and ~~Prevention and Preparedness Services~~ Short-term Follow-up Program at the ~~Oklahoma State~~ Department~~of Health~~.

"Newborn Screening Program Coordinator" refers to the coordinator of the ~~Prevention and Preparedness Services~~ Short-term Follow-up Program at the ~~Oklahoma State~~ Department~~of Health~~.

"Organic Acid Disorders" refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process organic acids properly. Each organic acid disorder is associated with a specific enzyme deficiency that causes the accumulation of organic acids in blood and urine. The accumulated compounds or their metabolites are toxic, resulting in the clinical features of these disorders including ~~mental retardation~~developmental disability and death.

"Pediatric Sub-Specialist" means a physician licensed in Oklahoma, board certified in pediatrics and board certified in a pediatric sub- specialty of pediatric endocrinology, pediatric pulmonology, or pediatric hematology; or a physician licensed in Oklahoma, board certified in pediatrics whose primary area of practice is pediatric endocrinology, pediatric hematology, pediatric pulmonology, or metabolic specialist.

"Phenylketonuria" or **"PKU"** means an inherited disease caused by the body's failure to convert the amino acid phenylalanine to tyrosine due to defective enzyme function, which if not treated early in life, causes ~~mental retardation~~developmental disability.

"Planned Health Care Provider" or **"Medical Home"** means the health care provider who will be providing health care for the infant after discharge from the hospital.

"Pompe" or **"Pompe Disease"** means a condition in which individuals are missing an enzyme to break down complex sugar molecules. This disorder can lead to muscle weakness, poor muscle tone and heart defects if not identified and treated early.

"Premature Infant" means an infant weighing less than 2500 grams or any live birth before the thirty-seventh week of gestation.

"Pulse Oximetry Screening" means a test using a device placed on an extremity to measure the percentage of oxygen in the blood.

"Repeat Specimen" means an additional newborn screening specimen to be collected after the initial specimen.

"Satisfactory Specimen" means a specimen collected using a single form kit which is suitable in both blood quantity and quality to perform screening for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, ~~and upon completion of laboratory validation studies and establishment of short-term follow-up services,~~ Severe Combined Immunodeficiency (SCID) spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease upon completion of laboratory validation studies, ~~and~~ establishment of short-term follow-up services,~~detectable via the Department's laboratory technology utilized in newborn screening~~ and ~~approved~~approval by the Commissioner of Health. All requested demographic information on the form kit must be completed. Federal CLIA '88 regulations require that the form ~~kit's~~kit~~laboratory requisition contain sufficient patient data that~~ must include patient's name, date of birth, sex, date of collection, test(s) to be performed, and complete name and address of person requesting the test.

"Screened" means a specimen that has been collected and tested on an infant less than 6 months of age.

"Screening" means a test to sort out ~~apparently~~ well persons who ~~probably~~may have a disease or defect from those who ~~probably do~~may not. A screening test is not intended to be diagnostic.

"Severe Combined Immunodeficiency" means a group of potentially fatal inherited disorders related to the immune system, which if not treated can lead to potentially deadly infections.

"Short-term Follow-up" includes services provided by the Department and the health care provider that begins when the laboratory reports an abnormal or unsatisfactory screen result and ends with a diagnosis of normal, lost (repeat testing not achieved), or affected with appropriate treatment and referral has been initiated.

"Sick Infant" means an infant with any condition or episode marked by pronounced deviation from the normal healthy state; illness.

"Sickle Cell Disease" means an inherited disease caused by abnormal hemoglobin(s) which if not treated early in life may result in severe illness, ~~mental retardation~~developmental disability or death (one variation is commonly referred to as sickle cell anemia).

"Specimen" means blood collected on the filter paper Newborn Screening Form Kit.

"Spinal Muscular Atrophy" or **"SMA"** means conditions in which the loss of specialized nerves cells, which control muscle movement leads to weakness and atrophy of muscles used for crawling, walking, sitting up and controlling head movement. In severe cases the muscles used for breathing and swallowing may be affected.

"Submitter" means a hospital, other facility, or physician submitting a Newborn Screening specimen.

"The Program" means the Newborn Screening Program.

"Transfer" means release of the newborn from care and custody from one licensed health facility to another.

"Unsatisfactory Specimen" means a specimen which is not collected on a form kit and/or is not suitable in blood quantity and quality to perform screening for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, ~~and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe~~ severe ~~Combined~~ combined ~~Immunodificiency~~ immunodeficiency (SCID), spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease upon completion of laboratory validation studies, ~~and~~ establishment of short-term follow-up services,~~detectable via the Department's laboratory technology utilized in newborn screening~~ and ~~approved~~ approval by the Commissioner of Health and/or Federal CLIA '88 regulations are not followed and the form kit's laboratory requisition does not include patient's name, date of birth, sex, date of collection, test(s) to be performed, and complete name and address of person requesting test.

"X-Linked Adrenoleukodystrophy" or **"X-ALD"** means condition in which the nervous system and adrenal glands are affected. Impact to the nervous system reduces the ability of the nerves to relay information to the brain. Impact to the adrenal glands may cause weakness, weight loss, skin changes, vomiting, and coma.

SUBCHAPTER 3. TESTING OF NEWBORNS

310:550-3-1. Testing of newborns

(a) All newborns in Oklahoma shall be tested by a Certified Newborn Screening Laboratory for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, ~~and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe~~ severe ~~Combined~~ combined ~~Immunodeficiency~~ immunodeficiency (SCID), spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease upon completion of laboratory validation studies, ~~and~~ establishment of short-term follow-up services, ~~detectable via the Department's laboratory technology utilized in newborn screening~~ and ~~approved~~ approval by the Commissioner of Health~~detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health~~; a parent or guardian may refuse screening of their newborn on the grounds that such examination conflicts with their religious tenets and/or practices.

(b) All newborns in Oklahoma shall be tested for CCHD by a pulse oximetry screening after twenty-four (24) hours of age or prior to discharge from the birthing facility.

(c) A parent or guardian who refuses the newborn screening blood test or pulse oximetry screening of their newborn on the grounds that such examination conflicts with their religious tenets and/or practices shall also indicate in writing this refusal utilizing the Newborn Screening Program Parent Refusal Form ~~as illustrated in Appendix C of this Chapter~~ provided by the program.

(d) The refusal form shall include the infant's name, date of birth, gender, demographic information, location of birth, name of the attending physician or provider, medical record number, indication of which screen is being refused (newborn blood test, newborn hearing screening, pulse oximetry screening), parent/guardian's printed name and signature as well as a witness' printed name, signature, and date. This signed refusal form shall be placed in the newborn's medical record with a copy sent to the Newborn Screening Program Coordinator.

SUBCHAPTER 5. SPECIMEN COLLECTION

310:550-5-1. Specimen collection

(a) **Specimen collection for hospital births.** For all live hospital births, the physician, licensed or certified birth attendant shall order the collection of a newborn screening specimen ~~on all newborns~~ prior to transfusion, as early as possible after 24 hours of age or immediately prior to discharge, whichever comes first. Due to the need to identify infants at risk for the disorders quickly, the specimen ~~should~~ shall be collected as early as possible after 24 hours of age. Specimens shall be collected on a single Newborn Screening Form Kit using capillary or venous blood. Cord blood is unacceptable. The hospital is responsible for collecting specimens on all infants.

(1) If the initial specimen for any infant is collected at or prior to 24 hours of age, the hospital and the physician are responsible for notifying the infant's parents verbally and in writing, utilizing the parent educational form on the Newborn Screening Form Kit, that a repeat specimen is necessary at three to five days of age. The infant's physician is responsible for ~~insuring~~ensuring that the repeat specimen is collected.

(2) The hospital is responsible for submitting a Satisfactory Specimen and for documenting all requested information on the form kit including the parent/guardian's name, address, phone or contact phone number and the planned health care provider who will be providing well care for the infant after discharge. ~~or~~Or if the infant is to be hospitalized for an extended period of time, the name of the infant's physician.

(3) The hospital is responsible for documenting specimen collection and results in the infant's hospital record.

(4) Infants who are transferred from one hospital to another during the newborn period shall have specimen collection documented in the infant's hospital record. It is the responsibility of the physician and the receiving hospital to ensure the specimen is collected.

(5) It is the responsibility of the hospital and physician to ensure that all infants are screened prior to discharge. If an infant is discharged prior to specimen collection, the Newborn Screening Program Coordinator shall be notified. The physician is responsible for ensuring the specimen is collected as required.

(b) **Screening for premature/sick infants.** For all premature/sick infants, the physician shall order the collection of a newborn screening specimen prior to red blood cell transfusion, as early as possible after twenty-four (24) hours of age but no later than~~at~~ three to seven days of age or immediately prior to discharge, whichever comes first. Due to the need to identify infants at risk for the disorders quickly, the specimen should be collected as early as possible after twenty-four (24) hours of age. It is recommended that a repeat newborn screening specimen be collected at fourteen (14) days of age. Specimens shall be collected on the Newborn Screening Form Kit using capillary or venous blood. The hospital and the physician are responsible for ensuring that specimens are collected on all premature/sick infants.

(1) Premature/sick infants screened at or prior to twenty-four (24) hours of age must be re-screened between seven to fourteen (7-14) days of age.

(2) Premature/sick infants who could not be screened prior to a red blood cell transfusion should be screened by the seventh (7th) day of life, with a repeat specimen collected when plasma and/or red cells will again reflect the infant's own metabolic processes and hemoglobin type (the accepted time period to determine hemoglobin type is ninety to one hundred and twenty (90 to 120) days after transfusion).

(3) The recommended follow-up study for an abnormal thyroid screen in a premature infant is a serum free T4 (measured by direct dialysis or an equivalent method) and TSH at seven to fourteen (7-14) days of age.

(c) **Specimen collection for out-of-hospital births.**

(1) All infants who are not born in a hospital shall be tested as early as possible after twenty-four (24) hours of age. The infant's physician, licensed or certified birth attendant is responsible for submitting a Satisfactory Newborn Screening Specimen. If there is not a physician, licensed or certified birth attendant involved in a non-hospital birth, the person attending the birth and the parents of the infant are responsible for submitting a Satisfactory Newborn Screening Specimen.

(2) If a physician examines a child in the first three months of life who was not born in a hospital, or born out of state, the physician will verify that the child has been screened. If the child has not been screened or if results of screening are not available, the physician should submit a Satisfactory Newborn Screening Specimen.

310:550-5-2. Technique for filter paper sample collection and pulse oximetry screening

(a) **Filter paper sample collection.**

(1) Specimens obtained with a Newborn Screening Form Kit should be collected in accordance with ~~Appendix A of this Chapter~~the standard for Blood Collection on Filter Paper for Newborn Screening Programs, NBS01-A6, Sixth Edition, as adopted and published by the Clinical and Laboratory Standards Institute on July 31, 2013, or most recent version. Failure to follow these methods of blood collection may cause inaccurate results and require repeat specimens.

(2) Submitters are responsible for submitting a Satisfactory Newborn Screening Specimen.

(b) **Pulse oximetry screening.**

(1) **Pulse oximetry screening.** Pulse oximetry screening will be performed utilizing hospital protocol. ~~See Appendix E for recommended protocol~~A recommended protocol is provided by the program.

(2) **Authorized provider.** An authorized health care provider shall perform the pulse oximetry screening.

(3) **Newborn Infants Receiving Routine Care.**

(A) The birthing facility or nurse shall:

(i) Perform pulse oximetry screening on the newborn Infant between twenty-four (24) hours and forty-eight(48) hours of life; or

(ii) If unable to perform the pulse oximetry screening, schedule the infant to be screened at the facility between twenty-four (24) hours and forty-eight (48) hours of life; or

(iii) Notify the infant's physician if screening was not performed.

(B) If the newborn infant is discharged from a facility after twelve (12) hours of life but before twenty-four (24) hours of life, the birthing facility shall perform pulse oximetry screening as late as is practical before the newborn infant is discharged from the birthing facility and shall notify the infant's physician of the early screening.

(C) If the infant is discharged before twelve (12) hours of life, the birthing facility shall perform the pulse oximetry screening between twenty-four (24) hours and forty-eight (48) hours of life.

(4) **Newborn infants in Special Care or Intensive Care.** Birthing facilities shall perform pulse oximetry screening on infants prior to discharge utilizing the protocol recommended ~~in appendix E~~by the program, unless the infant has an identified congenital heart defect or has an echocardiogram done. Continuous pulse oximetry monitoring may not be substituted for CCHD screening.

(5) **Circumstances Where Pulse Oximetry Screening is not Indicated.** Document on NBS filter paper the pulse oximetry screening was not performed. There may be instances where screening for CCHD is not indicated, including but not limited to instances where:

(A) The newborn infant's clinical evaluation to date has included an echocardiogram which ruled out CCHD; or

(B) The newborn infant has confirmed CCHD based on prenatal or postnatal testing.

~~(C) Indicate on NBS filter paper the pulse oximetry screening was not performed.~~

SUBCHAPTER 7. HOSPITAL RECORDING

310:550-7-1. Hospital recording

(a) **Newborn Screening Results.**

(1) The hospital shall implement a procedure to ensure that a newborn screening specimen has been collected on every newborn and transported to the Newborn Screening Laboratory within twenty-four (24) to forty-eight (48) hours of collection.

(2) The hospital shall immediately notify the infant's physician, parents or guardians, and Newborn Screening Program Coordinator if an infant is discharged without a sample having been collected. This notification shall be documented in the infant's hospital record.

(3) If no test results are received within fifteen (15) days after the date of collection, the hospital shall contact the Newborn Screening Laboratory to verify that a specimen had been received. If no specimen has been received, the hospital shall notify the physician.

(4) Any hospital or any other laboratory which collects, handles or forwards newborn screening samples shall keep a log containing name and date of birth of the infant, name of the attending physician, name of the planned health care provider who will be providing well care for the infant after discharge, medical record number, serial number of the Newborn Screening Form Kit used, date the specimen was drawn, date the specimen was forwarded, date the test results were received and the test results.

(5) Specimens should be transported in the manner designated by the Department.

(b) **Pulse Oximetry Screening Results.**

(1) **Recordation of Results.**

(A) All pulse oximetry screening results shall be recorded in the newborn infant's medical record and the results reported to a parent or guardian prior to discharge from the hospital.

(B) All pulse oximetry screening results shall be recorded on the Newborn Screening ~~Collection~~ Form Kit~~(ODH #450), found in Appendix A~~, along with the following information:

(i) Newborn infant's:

(I) Name;

(II) Date of birth;

(III) Place of birth; and

(IV) Primary care physician after discharge; and

(ii) Mother's Name.

(C) If the infant is not screened for CCHD prior to the Newborn Screening ~~Collection~~Form Kit being forwarded to the Public Health Laboratory for testing, fax documentation of CCHD screen results to the Oklahoma State Department of Health (OSDH) Newborn Screening (NBS) Program utilizing ~~Appendix E~~the Pulse Oximetry Screening Result Form provided by the program.

(D) The pulse oximetry result form shall include the infant's name, date of birth, mother's name, primary physician, birth hospital, medical record number, date of pulse oximetry screening, age at time of screening, pulse oximetry screening result, reason pulse oximetry screening was not performed (if applicable), printed screener's name and signature, and date the form was signed. ~~Include information listed above along with screen results.~~

(2) **Abnormal Pulse Oximetry Screen Results.**

(A) Abnormal pulse oximetry screening results shall be reported by the authorized health care provider who conducted the screening to the attending physician or attending clinician immediately.

(B) A newborn infant shall be evaluated immediately by an attending physician in order to complete the recommended protocol.

(C) A newborn infant may not be discharged from care until:

(i) A cause for the abnormal pulse oximetry screen has been determined;

(ii) An echocardiogram has been performed, read, and determined not to indicate CCHD; and/or

(iii) A plan of care and follow-up has been established with the infant's parent or guardian.

(D) The birthing facility shall report pulse oximetry screening results to the ~~OSDH~~Department as specified in this regulation.

(E) The birthing facility shall provide notification of abnormal pulse oximetry results to the newborn infant's:

(i) Parent or guardian;

(ii) Physician or clinician following the inpatient infant; and

(iii) Primary care provider.

(3) **Newborn Infants Not Screened for CCHD.**

(A) If a newborn infant is not screened for CCHD secondary to discharge before 12 hours of life, the birthing facility shall:

(i) Follow-up with the family to screen the infant at their facility between twenty-four (24) and forty- eight (48) hours of life; or

(ii) Follow-up with the family to refer to an authorized facility for screening between twenty-four (24) and forty-eight (48) hours of life after discharge from the facility; and

(iii) Report screening results to the Department utilizing the form ~~in Appendix E~~provided by the program and indicating the reason for not screening which shall be "early discharge".

(B) If the newborn infant is not screened for CCHD secondary to screening not being indicated, the birthing facility shall report results to the Department utilizing the form ~~in Appendix E~~provided by the program and indicate the reason for not screening,

which shall be "screening not indicated," with a notation for the reason pulse oximetry screening was not performed

(C) If the newborn infant is not screened secondary to parent or guardian refusal, the birthing facility shall fax a refusal form to the Department utilizing the form ~~in Appendix C~~ provided by the program and indicate the reason for not screening, which shall be "parent refusal".

SUBCHAPTER 11. ADVISORY COMMITTEE

310:550-11-1. Advisory committee

~~A standing committee of the Oklahoma Genetics Advisory Council (OGAC)~~ The Infant and Children's Health Advisory Council shall advise the Department on newborn screening issues.

SUBCHAPTER 17. FOLLOW-UP FOR PHYSICIANS

310:550-17-1. Follow-up for physicians

(a) If a physician examines a child in the first three months of life, the physician will verify that the child has been screened, and document results in the infant's medical record. If the child has not been screened or if results of screening are not available, the physician should submit a Satisfactory Newborn Screening Specimen within 48 hours or as soon as possible.

(b) On written notification by the Newborn Screening Program of follow-up requirements for a newborn screen result of abnormal, unsatisfactory ~~and~~ or for specimens collected at or less than 24 hours of age at time of collection; the infant's physician or designee will obtain required repeat screening, confirmatory testing, or diagnostic studies, in the timeframe specified so that therapy, when indicated, can be initiated expediently.

(c) The infant's physician may selectively rescreen infants as clinically indicated.

(d) Because patients may relocate without a forwarding address or contact information, where these rules place responsibility upon physicians and hospitals to ~~follow-up or~~ notify parents, ~~then~~ that shall ~~be deemed to~~ require only ~~that~~ a reasonable search be made. ~~and that if~~ If the parents are not contacted ~~that~~ the Newborn Screening Program Coordinator shall be notified of the ~~non-follow-up or non-notification~~ inability to notify after efforts to contact the parents have been exhausted.

(e) For appropriate comprehensive medical care, all confirmed cases of congenital hypothyroidism, galactosemia, phenylketonuria, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, medium- chain acyl coenzyme A dehydrogenase deficiency (MCAD), biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, ~~and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe~~ severe ~~Combined~~ combined ~~Immunodeficiency~~ immunodeficiency (SCID), spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease upon completion of laboratory validation studies, ~~and~~ establishment of short-term follow-up services, ~~detectable via the Department's laboratory technology utilized in newborn screening~~ and ~~approved~~ approval by the Commissioner of Health, should have a referral to a pediatric sub-specialist, and the parent should be referred for enrollment in newborn screening long-term follow-up services as designated by the Newborn Screening Program. For referral information, please contact the Newborn Screening Short-term Follow-up Program at (405) 271-6617 or 1-800-766-2223~~,~~ ext. 6617.

SUBCHAPTER 19. REPORTING

310:550-19-1. Physician reporting and medical records

(a) If confirmatory or follow-up testing is not performed by the Newborn Screening Laboratory or through a contract laboratory designated by the Newborn Screening Program, the infant's physician must report to the Newborn Screening Program Coordinator the results within seven (7) days after the completion of the medical evaluation, using the Department's Newborn Screening Report Form ~~as illustrated in Appendix B of this Chapter~~provided by the program.

(b) The report form shall include infant's name, date of birth, newborn screening laboratory number, mother's name, final diagnosis, notation of initiation of treatment and start date, notation of referral to pediatric sub-specialist, notation if family was referred to other services, printed name and signature of physician determining diagnosis, telephone number and date form is completed. A copy of the confirmatory test results must accompany the report form.

(~~b~~c) For all diagnosed cases of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, ~~and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe~~severe ~~Combined~~combined ~~Immunodeficiency~~immunodeficiency (SCID), spinal muscular atrophy (SMA), x-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoisis type I (MPS I) and pompe disease upon completion of laboratory validation studies, ~~and~~ establishment of short-term follow-up services, ~~detectable via the Department's laboratory technology utilized in newborn screening~~ and ~~approved~~approval by the Commissioner of Health, the infant's physician shall report treatment date if applicable, and referral information to the Newborn Screening Program Coordinator by completing the Department's Newborn Screening Report Form ~~as illustrated in Appendix B of this Chapter~~provided by the program.

(~~c~~d) These reports shall be confidential and may be utilized only for the purpose of ensuring service delivery, program administration, data analysis, and evaluation.

(~~d~~e) On request, a birthing facility or health care provider shall make available to the ~~OSDH~~ NBS Program or Oklahoma Birth Defects Registry:

(1) Medical records;

(2) Records of laboratory test; and

(3) Any other medical information considered necessary to:

(A) Determine final outcomes of abnormal CCHD screening results; and

(B) Evaluate CCHD screening activities in the State; including:

(i) Performance of follow-up evaluations and diagnostic tests;

(ii) Initiation of treatment when necessary; and

(iii) Surveillance of the accuracy and efficacy of the screening.

(~~e~~f) Information that the Department receives under this chapter is confidential and may only be used or disclosed:

(1) To provide services to the newborn infant and the infant's family;

(2) To study the relationships of the various factors determining the frequency and distribution of CCHD;

(3) For State or federally mandated statistical reports; and

(4) To ensure that the information received by the Department is accurate and reliable.

SUBCHAPTER 21. INFORMATION

310:550-21-1. Information

(a) For information regarding laboratory procedures, or results of laboratory tests or to order form kits, contact Public Health Laboratory Service, Oklahoma State Department of Health, P.O. Box 24106, Oklahoma City, Oklahoma 73124-0106, (405) 271-5070, FAX (405) 271-4850.

(b) For general information or information regarding follow-up for newborn screening or pulse oximetry screening, contact Newborn Screening Short-term Follow-up Program, ~~Prevention and Preparedness Services,~~ Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299, (405) 271-6617, FAX (405) 271-4892, 1-800-766-2223, ext. 6617. General information about the Newborn Screening Program is available on the OSDH Web site at www.health.ok.gov.

SUBCHAPTER 23. STANDARDS, PROCEDURES, AND FOLLOW-UP FOR CERTIFIED LABORATORIES

310:550-23-1. Procedures

(a) The Commissioner of Health shall establish procedures for newborn screening laboratories which shall include laboratory methodology, proficiency testing, quality assurance, sample collection, reporting, follow-up, handling, use, retention, storage and disposition of form kits.

(b) The Commissioner of Health shall establish procedures for the Department's newborn screening short-term follow-up program which shall include quality assurance, notification of providers and parents, follow-up guidelines, and parent and provider education.

(c) Hospitals, physicians, and laboratories shall comply with procedures for the Newborn Screening Program established by the Commissioner of Health.

(d) Any laboratory performing newborn screening tests shall be certified by the Department as a Newborn Screening Laboratory. In order to be certified as a Newborn Screening Laboratory, a laboratory shall maintain technical proficiency and ensure that test reagents and equipment are properly standardized.

(e) A Certified Laboratory refers to the Oklahoma State Public Health Laboratory or a laboratory approved by the Oklahoma State Department of Health to conduct newborn screening tests. A laboratory desiring certification as a Newborn Screening Laboratory shall make written application to the Public Health Laboratory Service of the Department. A certified laboratory shall meet the following minimum standards:

(1) **Eligibility for approval.** A laboratory in Oklahoma that meets the requirements of Section 353 of the Public Health Service Act (42 U.S.C. 263a) as revised by the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88), Public Law 100-578. The Laboratory must have a CLIA certificate for tests of High Complexity and meet the criteria for those tests as specified in CLIA '88 and amendments. The lab must have the capacity to provide testing for the mandated newborn screening panel on a single satisfactory filter paper specimen submitted by the birth hospital or provider.

(2) **Minimum tests.** A laboratory shall perform a sufficient number of tests each week, a minimum of three hundred (300) blood samples from different Oklahoma infants a week for each disorder, to maintain technical proficiency and ensure that test reagents and equipment are properly standardized.

(3) **Record keeping.**

(A) The laboratory shall log in each sample received with an identifier. All patient information and test results shall be linked to the identifier and maintained as a permanent record for a period of twenty-one (21) years.

(B) The laboratory shall maintain quality control and proficiency test records and shall be available for inspection by the Department.

(4) **Standard laboratory screening assay methods.** All assay methods must be approved by the Commissioner of Health.

(5) **Follow-up for certified laboratories.**

(A) Within fifteen (15) days after specimen collection, the Certified Laboratory shall send a written report of the test results with repeat testing requirements, if indicated, to the submitter and physician listed on the filter paper requisition.

(B) The Certified Laboratory will reject any unsatisfactory samples for testing.

(C) The Certified Laboratory must maintain a database with the capacity to report abnormal results to the Department's Newborn Screening Program Coordinator or designee.

(D) The Certified Laboratory must report abnormal results that are possible disease conditions within eight (8) to twenty-four (24) hours to the Department's Newborn Screening Program Coordinator or designee.

(6) **Reporting.** Certified Laboratories shall compile quarterly and annual reports ~~for the Newborn Screening Program~~ of total screening tests, abnormal tests by disorder, unsatisfactory tests, and for specimens collected at or less than twenty-four (24) hours of age at time of collection test for the Newborn Screening Program.

(7) **Certification of laboratories.**

(A) A Certificate of Approval will be issued ~~Upon~~ upon satisfying the requirements of these standards and demonstrating proficiency in the presence of an authorized representative from the Department ~~the following is issued. A certificate of approval, which~~ This Certificate of Approval will specify:

(i) Name of laboratory

(ii) Test of certification must be approved for all mandated tests.

(iii) Date of issue and expiration: certificate issued for one (1) year and renewable annually.

(8) **Revocation of certification.**

(A) The laboratory shall be in compliance with all applicable Federal or State Laws, or regulations. The compliance with the requirements thereof shall be the responsibility of the laboratory, without reliance on or direction by the Oklahoma State Department of Health ~~(OSDH)~~. Following notice by ~~OSDH~~the Department of its intent to revoke the laboratory's certification and completion of an individual proceeding pursuant to Article II of the Oklahoma Administrative Procedures Act (APA), the certification of a laboratory may be revoked, based upon proof by a preponderance of the evidence for any of the following reasons:

(i) Failure to meet any requirements in these regulations~~.~~; or

(ii) Failure to use a standard laboratory assay approved by the Commissioner of Health~~.~~; or

(iii) Failure to participate in a recognized proficiency program and/or maintain proficiency~~.~~; or

(iv) Failure to keep adequate records of test results and quality control~~.~~; or

(v) Failure to give prompt notice of changes in personnel performing the tests.

(B) Upon notice of revocation the laboratory shall cease to perform newborn screening and return their certificate of approval.

(C) Reinstatement of laboratory certification shall be contingent upon the following:

(i) A laboratory shall not apply for reinstatement until a minimum of three months has elapsed from date of revocation~~.~~; and

(ii) All factors which can be identified must be corrected~~.~~; and

(iii) A laboratory applying for reinstatement must meet the same requirements as for initial application.

(D) Revocation of certified laboratory status by OSDH may be appealed pursuant to Article II of the Oklahoma APA.

APPENDIX A. INSTRUCTIONS FOR FILTER PAPER SAMPLE COLLECTION [REVOKED]

Adapted from CLSI *Blood Collection on Filter Paper for Newborn Screening Programs*; Approved Standard-Fifth Edition, LA4-A5, Vol.27 No.20, 2007.

Preliminary Steps
Ensure that the expiration date of the filter paper form kit has not passed. Complete the required information on the filter paper form kit. A ballpoint pen should be used; soft-tip pins will not copy through to the other sheets of paper. Address imprint devices (or adhesive labels) should never be used unless the handling process ensures that the patient information is not obscured and the blood collection area is not compromised. Do not use typewriters or printers that might compress the paper. Avoid touching the area within the circles on the filter paper section before, during and after collection (blood spots) of the specimen. Do not allow water, feeding formulas, antiseptic solutions, glove powder, hand lotion, or other materials to come into contact with the specimen card before or after use.

Precautions
Confirm the identity of the infant and ensure accuracy of the demographic data on the card. Wash hands vigorously before proceeding. All appropriate precautions, including wearing powder-free gloves (changing gloves between infants), should be taken for handling blood and disposing of used lancets in a biohazard container for sharp objects.

Site Preparation
Warm the newborn's heel, since warming the skin-puncture site can help increase blood flow. A warm, moist towel or diaper at a temperature no higher than 42° C may be used to cover the site for 3 minutes. This technique increases the blood flow sufficiently and will not burn the skin. In addition, positioning the infant's leg lower than the heart will increase venous pressure.

Cleaning the Site
The skin should be wiped with alcohol (isopropanol/water: 70/30 by volume, "70%"). Allow the skin to air dry.

Puncture
To obtain sufficient blood flow, puncture the infant's heel on the plantar surface of the heel with a sterile lancet or with a heel incision device. The incision device provides excellent blood flow by making a standardized incision 1.0 mm deep by 2.5 mm long. Any puncture device used should be selected so that the puncture does not exceed 2.0 mm in depth. For infant safety, scalpel blades or needles must not be used to puncture the skin for blood collection. Disposable skin puncture lancets of different designs are commercially available for performing the heel stick on infants. For worker safety, disposable skin puncture devices that protect the user from unintentional self-inflicted skin punctures should be used.

In small, premature infants, the heel bone (calcaneus) might be no more than 2.0 mm beneath the plantar heel skin surface and half this depth at the posterior curvature of the heel. Studies indicate that for some infants (including full-term infants) a puncturing depth of 2.0 mm might be excessive and might cause bone damage. In this situation other collection methods should be considered.

Direct Application
After the heel has been punctured, wipe away the first drop of blood with a sterile gauze pad or cotton ball and allow a larger drop of blood to form. (Intermittently apply gentle pressure to the heel with the thumb, and ease this pressure as drops of blood form). Touch the filter paper gently against the large blood drop and, in one step, allow a sufficient quantity of blood to soak through and completely fill a preprinted circle on the

filter paper. Do not press the filter paper against the puncture site on the heel. Blood should be applied only to one side of the filter paper. Both sides of the filter paper should be examined to assure that the blood uniformly penetrated and saturated the paper. During collection avoid milking or layering:

Milking: Excessive milking or squeezing the puncture might cause hemolysis of the specimen or result in an admixture of tissue fluids with the specimen and might adversely affect the test result.

Layering: Do not apply layers of successive blood drops to the same printed circle. Applying successive drops of blood to already partially dried spots causes nonuniform analyte concentrations and invalidates the specimens.

After blood has been collected from the heel of the newborn, the foot should be elevated above the body, and a sterile gauze pad or cotton swab pressed against the puncture site until the bleeding stops. It is not advisable to apply adhesive bandages over skin puncture site on newborns.

Collection
The required blood spots should be collected so that there is one in each pre-printed circle of the filter paper. Failure to collect and fill each pre-printed circle might result in the specimen being rejected (unsatisfactory) for testing. If blood flow diminishes so that a circle is not completely filled, repeat the sampling technique using a new circle or, if necessary, a new blood collection card.

For alternative methods to specimen collection (e.g., capillary tube, dorsal hand vein, umbilical venous catheter or umbilical arterial catheter) refer to the CLSI *Blood Collection on Filter Paper for Newborn Screening Programs*; Approved Standard-Fifth Edition (LA4-A5, Vol. 27 No. 20) or contact the Newborn Screening Program Coordinator.

Drying
Avoid touching or smearing the blood spots. Allow the blood specimen to air dry on a horizontally level, nonabsorbent, open surface for at least 3 hours at an ambient temperature of 15° C to 22° C. Keep the specimen away from direct sunlight (indirect room light is not usually detrimental unless accompanied by heat). Blood spots on the filter paper should not be heated, stacked, or allowed to touch other surfaces during the drying process.

The Filter Paper has a new fold-over protective cover. This protective cover is used to protect the blood spots from contamination and can be used in the drying process. To use the protective cover in the drying process simply elevate the blood spots to gently rest on the edge of the protective cover. After drying, the protective cover should be placed over the spots to prevent contamination.

Stacking
Since leaching (cross-contamination) between specimens might occur, specimen-to-specimen contact is not appropriate. Before placing the specimens in a paper envelope for mailing, use the fold-over protective cover to cover each individual blood spot. When stacking of exposed blood spots cannot be avoided, the following procedure should be done:

Before placing the specimens in a paper envelope for mailing, the dried blood spots on the collection card should be rotated 180° from the blood spots on the cards in the stack immediately above and below.

If the physical barrier is used (fold-over protective cover), specimen rotation is not necessary.

Mailing
Specimens should be transported in the manner designated by the Department. The collection card should

be transported or mailed to the Newborn Screening Program laboratory within twenty-four (24) hours after collection. Mailing delays at collection sites should be avoided, and the postal or transport environment relative to possible delays should be considered. Never place the filter paper specimen in plastic bags. Use the form kit's protective overlay to cover the filter paper spots when mailing or transporting. If mailing the specimens use a U.S. Postal Service approved envelope.

Information

For information regarding specimen collection, Postal regulations, envelope and form kit purchasing, please contact the Newborn Screening Program Laboratory at (405) 271-5070.

OHD #450 Form Kit

SN 1391373 Newborn Screening Form
Oklahoma State Department of Health-P.O. Box 24106, Oklahoma City, OK 73124-0106 (405) 271-5070
ODH #450 REV02-2007

DO NOT WRITE IN THIS BOX

INFANTS INFORMATION
1. Infant's Last Name
2. Sex: M F
3. Date of Birth: MM DD YY
4. Birth Time: : 24 Hour Clock
5. Birthweight in Grams
6. If Multiple Birth Indicate Birth Order: A-H
7. Infant's Medical Record or I.D.
8. Provider ID
9. Infant's Provider or Physician's Name
10. Mom's Medicaid Number
11. ( ) - Provider's Phone Number

MOMS INFORMATION
1. Mom's Last Name, First Name
2. Mom's Age
3. Mom's Address
4. Apt. #
5. Mom's City
6. State
7. Zip
8. ( ) - Mom's Telephone or Contact
9. - - Mom's Social Security #
10. Mom's Race/Ethnic: 1. White 2. Black 3. Hispanic 4. Asian 5. American Indian 6. Other

Pulse Oximetry (CCHD) Screen
☐ Not Performed ☐ Pass ☐ Fail

SUBMITTING HEALTH PROVIDER ID #
Return to Submitter at this address:

SPECIMEN INFORMATION
1. Collection Date: M M D D Y Y Collection Time: : 24 Hour Clock
2. Transfusion Date: MM DD YY Time: : 24 Hour Clock

Do not write in this box

3. Has a previous metabolic blood test been done anywhere? ☐ Yes ☐ No
Previous OSDH Lab Number
4. Check all that apply at time of screening:
___ TPN ___ Antibiotics ___ Lactose-Free Formula (Soy)
___ Meconium ileus ___ Family History of CF
5. Test Requested:
☐ All Tests ☐ HGB Only ☐ GALT ☐ CFTR ☐ Phe Monitor

☐ Adoption (check if baby is being adopted)
(See back of form for instructions)

Hearing Screening Results:
Right Ear: ☐ Pass ☐ Refer
Left Ear: ☐ Pass ☐ Refer
Screen Method: ☐ ABR ☐ OAE ☐ Other (Specify)_____
If not screened, reason:
☐ Technical problem ☐ No equipment ☐ Delayed
☐ Caregiver refused ☐ Baby discharged ☐ Other _____
Hearing risk status–Check all that apply:
☐ Blood relatives of the infant have a permanent hearing loss that began at birth or in early childhood.
☐ Infant is suspected of having a congenital infection (neonatal herpes, cmv, rubella, syphilis, toxoplasmosis).
☐ Infant has craniofacial anomalies (pinna/ear canal abnormality, cleft lip/palate, hydrocephalus).
☐ Infant had exchange transfusion.
☐ Infant has serum bilirubin level ≥ 15 mg/dL.
☐ Infant was placed in a Level II or III nursery for more than 24 hours.

IVD 1391373 SN LOT W112 6930612 2015-08

OHD #450 Form Kit (cont)

NEWBORN SCREENING PROGRAM

Oklahoma State Department of Health

Newborn Screening Program

Baby's Last Name

Baby's First Name

ATTENTION PROVIDER

DETACH AND GIVE TO PARENT OR GUARDIAN

SN 1395395

THE NEWBORN SCREENING BLOOD TEST

A special blood test has been done to protect your baby from hidden disease. The test screens for the disorders listed on the back of this form. These disorders are harmful if treatment is not started within the first month of life (each disorder is explained on the back of this sheet).

WILL FURTHER TESTING BE REQUIRED?

If your baby is tested before 24 hours of age, the test must be repeated at 3 to 5 days of age. If the blood test is abnormal or inadequate to test, a repeat test will be needed. Please contact your baby's physician to determine if your baby needs a repeat test.

ASK YOUR BABY'S DOCTOR FOR THE TEST RESULTS

Please take this form with you to your baby's first doctor visit and ask for test results. If your baby's doctor does not have the test results and you have not been notified by mail, please call the Oklahoma State Department of Health when your baby is three weeks of age at **(405) 271-6617 or 1-800-766-2223.**

OHD #450 Form Kit (cont)

Early Detection and Treatment Provide Oklahoma Infants a Healthy Start

Congenital Hypothyroidism – Congenital hypothyroidism is usually caused by abnormal development or absence of the thyroid gland. Treatment includes daily thyroid medication to prevent mental retardation and poor growth.

Classic Galactosemia – Galactosemia occurs when the baby cannot break down a special sugar in milk called galactose. Treatment includes a galactose free diet.

Congenital Adrenal Hyperplasia 21-hydroxylase Deficiency (CAH) – CAH is caused by the lack of an enzyme that the adrenal gland uses to process hormones. In girls the genitalia may appear like that of a male, and can result in incorrect sex assignment. Treatment includes medication (hormones) to prevent serious illness and death.

Cystic Fibrosis – Cystic Fibrosis is a disorder that causes thick mucus to collect in the lungs and other body organs, which can result in breathing problems, lung infections, and poor digestion of food. Treatment includes medication and close monitoring by the Cystic Fibrosis Center.

Sickle Cell Disease & other hemoglobin disease – Sickle cell disease occurs when the hemoglobin in the red blood cells does not develop normally. Red blood cells have the important job of delivering oxygen to different parts of the body. Treatment includes medication and close monitoring by a Hematologist.

Medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD) & Other Fatty Acid Oxidation Disorders – These conditions prevent the body from using certain fats for energy, particularly during periods without food (fasting). Treatment includes frequent feedings, dietary management, and medication.

Phenylketonuria (PKU) & Other Amino Acid Disorders – Amino Acid Disorders, including PKU, are caused by the body's inability to break down certain proteins in food, or by the body's inability to handle the extra nitrogen produced by the breakdown of protein. Treatment includes strict dietary management and may include medication.

Organic Acid Disorders – These conditions are caused by the body's inability to process certain proteins and/or fats properly. Treatment includes strict dietary management and may include medication.

Biotinidase Deficiency – The vitamin biotin is found in many foods, and is important for proper growth and development. Biotinidase Deficiency prevents babies from using biotin in a normal manner. Treatment includes biotin (vitamin) supplements and regular monitoring.

For all of these disorders, early treatment is needed to prevent severe illness or death.

Special Note: for sickle cell disease and cystic fibrosis screening, the blood test might find that your baby is a "carrier" of a disorder. Genetic Counseling is recommended.

Questions about the newborn screening blood test?
Call: 405-271-6617 or 800-766-2223
E-mail: newbornscreen@health.ok.gov
Web site: http://nsp.health.ok.gov

OHD #450 Form Kit (cont)

Instruction on Specimen Collection and Mailing (Complies with CLSI Standard LA 4 – A5)

SUBMITTER RESPONSIBILITY

1. Completion of form.
2. Collection of an adequate specimen for testing.
3. Send specimens within 24 hours of collection.
4. The quality of the specimen received by the Public Health Laboratory Service.
5. Listing the planned health care provider who will be providing well care for the infant after discharge or infant's physician if the infant is to be hospitalized for extended period of time.

SCREENING REQUIREMENTS FOR ALL NEWBORNS

1. Prior to blood transfusion, as early as possible after 24 hours of age or immediately prior to discharge, whichever comes first.
2. If infant is screened at less than 24 hours of age, repeat screen at 3-5 days of age (if premature or a sick infant, repeat screen at 7-14 days of age).
3. All premature and sick infants should have a repeat screen at 14 days of age.

COMPLETION OF FORM

1. Legibly print and complete all information requested.
2. List submitter's return address and submitter ID number. Submitter means the facility or provider who has collected the specimen.
3. List the provider or physician who will be following the baby for well care or the attending physician if the infant is hospitalized for an extended period of time.
4. List the parent's correct address and phone number for notification of abnormal results.
5. Document results of the infant's pulse oximetry (CCHD) screen.

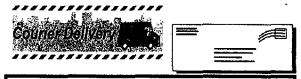
Note: All results are sent to the submitter and the provider listed on the form.

COLLECTION OF BLOOD SPECIMEN

1. To prevent specimen contamination do not touch any of the filter paper circles before or after collection.
2. Select puncture site and cleanse with 70% isopropanol and allow heel to air dry. Usual puncture site is illustrated below.

3. Use a sterile, disposable lancet or heel incision device to perform a swift clean puncture.
4. Wipe away first drop of blood with a sterile gauze or cotton ball.
5. Gently touch the filter paper against a large drop of blood and allow a sufficient quantity of blood to soak through to completely fill the preprinted circle on the filter paper. Blood must be applied to only one side of the filter paper and circle area should be fully saturated.
6. Fill each circle with ONE large drop of blood.
7. Protect freshly collected specimens from contamination.
8. Allow blood specimen to air dry at room temperature for at least 3 hours in a horizontal position. **Do not stack wet specimens. Insufficient drying will adversely affect the test results.** **DO NOT PLACE FILTER PAPER SPECIMENS IN A PLASTIC BAG.**
9. Specimen may be "Unsatisfactory for Testing" for the following reasons:
   a. Circles not completely filled in or not thoroughly saturated.
   b. Uneven saturation of circles or multiple sample application.
   c. Specimen appears contaminated.
   d. Clotted or caked blood on filter paper, or damaged filter paper.
   e. Assay inhibition due to antibiotic or other substance.
   f. Incomplete elution of blood from filter paper.
   g. Laboratory requisition incomplete or improperly completed.
   h. Results inconsistent – possibly due to improper sample collection.
   i. Specimen submitted on incorrect form or expired form.
   j. No specimen received with form.
   k. Specimen placed in plastic bag while wet.
   l. Receipt of specimen was more than 14 days from date of collection.

To Order Newborn Screening Collection Kits (ODH #450): Call (405) 271-5070



Specimens should be transported in the manner designated by the OSDH Public Health Laboratory Service. Send specimens within 24 hours of collection.

Courier Service address:
NEWBORN SCREENING SECTION
Public Health Laboratory Service
1000 NE 10th Street
Oklahoma City, OK 73117-1299

Mailing address: *(using United States Postal Service)*
NEWBORN SCREENING SECTION
Public Health Laboratory Service
P.O. Box 24106
Oklahoma City, OK 73124-0106

Adoption

If infant is being adopted, check the Adoption box on the front of the form. List the agency or lawyer that is handling the adoption in the "Mom's Information" section. Please note: for proper identification, the "Infant's Information" section must be completed accurately. Questions? Please call (405) 271-6617 or (800) 766-2223.

APPENDIX B. REPORT FORM [REVOKED]

Newborn Screening Program Report Form

Infant's Name:_____ Infant's Birth Date__ __ / __ __ / __ __

Newborn Screening Program Lab #:_____ Mother's Name:_____

[ ] Diagnosis pending, Follow-up Plan:

Final Diagnosis (please attach confirmation lab results)
[ ] Normal
[ ] Trait Condition (specify carrier status)_____
[ ] Classic Galactosemia (GG phenotype/genotype)
[ ] Duarte/Galactosemia Compound Heterozygote (DG phenotype/genotype)
[ ] Congenital Adrenal Hyperplasia due to 21-Hydroxylase Deficiency
[ ] Cystic Fibrosis
[ ] Classic Phenylketonuria (PKU)
[ ] Hyperphenylalaninemia (not clinically significant)
[ ] Hyperphenylalaninemia (clinically significant treatment required)
[ ] Congenital Hypothyroidism
[ ] Medium-chain Acyl Coenzyme A Dehydrogenase Deficiency (MCAD)
[ ] Sickle Cell Disease (specify type)_____
[ ] Hemoglobin disease (specify type)_____
[ ] Biotinidase deficiency
[ ] Fatty Acid Oxidation Disorder (specify)_____
[ ] Organic Acid Disorder (specify)_____
[ ] Amino Acid Disorder (specify)_____
[ ] Severe Combined Immunodeficiency (specify type)_____
[ ] Other(specify)_____

Treatment Indicated? [ ] yes [ ] no
Date treatment started __ __ / __ __ / __ __

Referred to pediatric sub-specialist:
[ ] Endocrinologist (specify name): _____
[ ] Hematologist (specify name): _____
[ ] Metabolic Specialist (specify name): _____
[ ] Pulmonologist (specify name): _____
[ ] Immunologist (specify name):_____

Family referred for (check all that apply):
[ ] Genetic counseling (check provider):
__ Sickle Cell Association __ Geneticist __ Other
[ ] Enrollment in Newborn Screening Long-term Follow-up Program
[ ] Early Intervention Services

Print Physician's Name _____Telephone _____

Physician Signature_____ Date __ __ / __ __ / __ __

Mail or Fax this follow-up form with complete diagnostic information and confirmation lab results to: Prevention and Preparedness Services; ATTN: Newborn Screening Program Coordinator; 1000 NE Tenth Street, Oklahoma City, OK 73117-1299; Fax: (405) 271-4892; For questions or referral information, please call the Newborn Screening Program Coordinator at (405) 271-6617 or 1-800-766-2223.

APPENDIX C. REFUSAL FORM [REVOKED]

Oklahoma State Department of Health
Refusal of the Newborn Screening Blood Test
Religious Tenets and Practices Refusal

Infant's Name:_____Medical Record Number:_____

Date of Birth: __ __ / __ __ / __ __

Attending Physician or Provider, print name:_____

Place of Birth:

__ Hospital, print name_____

__ Birthing Facility, print name_____

__ Home Birth

Type of Screen Refused: ___ Newborn Blood Test ____ Pulse Oximetry Screen

I have received and read the parent educational brochure printed by the Oklahoma Department of Health on the Newborn Screening blood test and pulse oximetry screening. I understand that these disorders are easily detected by testing a small blood sample from my baby's heel or by measuring the amount of oxygen in my baby's blood.

I have been informed that all newborns are required by law (under 63 O.S. 2002, Sections 1-533 and 1-534) to have a newborn screening test collected and pulse oximetry screening performed.

I have been informed and I understand that this screening is done to detect these disorders because symptoms sometimes do not appear for several weeks or months, and irreversible damage can occur before symptoms become apparent to a family or a physician.

I have been informed and I understand that, if untreated, these conditions may cause permanent damage to my child, including mental retardation, growth failure, and even death. This permanent health damage can be prevented through early detection and treatment.

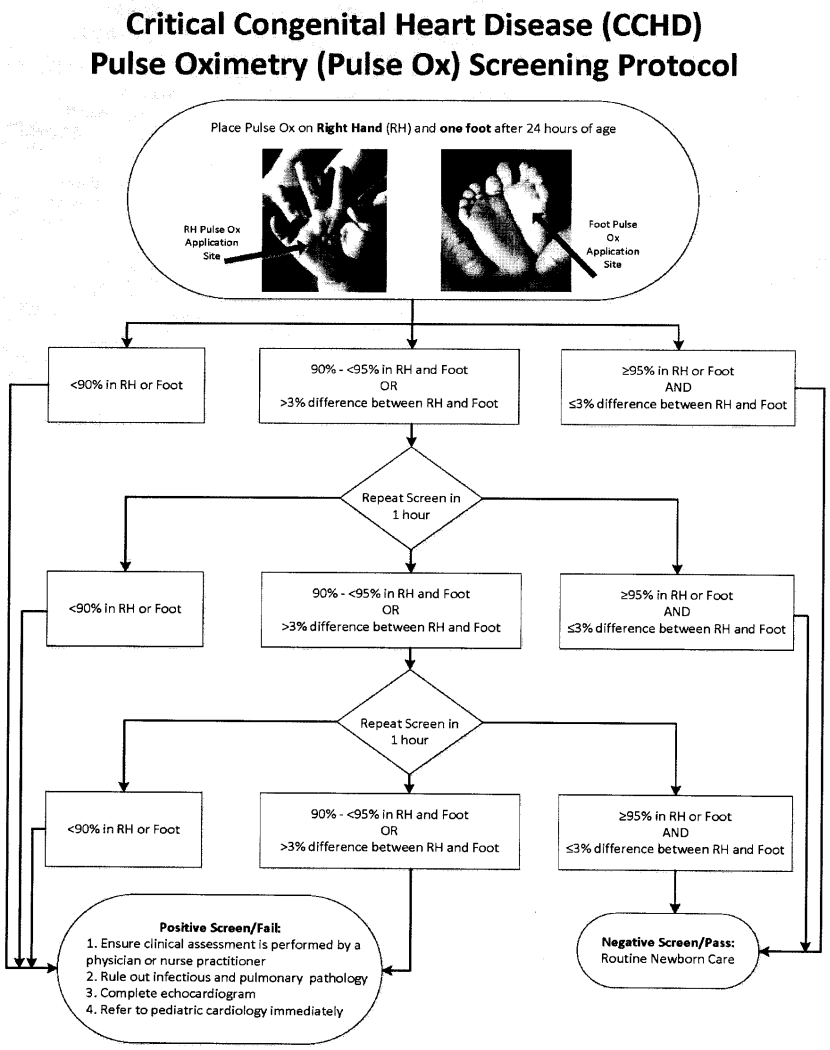
I have discussed the newborn screening test and pulse oximetry screening with my physician or health care provider and I understand the risks to my child if the screening test is not completed.

I understand that the law allows a parent or guardian to refuse newborn screening and pulse oximetry screening based on the grounds that such examination conflicts with a person's religious tenets and practices. I elect to refuse newborn screening on that such testing of my infant conflicts with my religious tenets and practices. My decision was made freely and I accept the legal responsibility for the consequences of this decision.

_____	_____	___/___/___
Printed Parent/ Guardian's Name	Parent/Guardian Signature	Date
_____	_____	___/___/___
Print Witness Name	Signature of Witness	Date

Original to infant's record, provide a copy to parent, and forward copy by fax or mail to: Oklahoma State Department of Health, Newborn Screening Program Coordinator, 1000 NE Tenth Street, Oklahoma City, OK 73117-1299, (405) 271-6617 or 1-800-766-2223; Fax (405) 271-4892.

APPENDIX D. RECOMMENDED PULSE OXIMETRY SCREENING PROTOCOL [REVOKED]



APPENDIX E. PULSE OXIMETRY SCREENING RESULT FORM [REVOKED]

Oklahoma State Department of Health
Pulse Oximetry Screening Result Form

Infant Information:

Infant's Last Name: _____ Infant's First Name: _____

Medical Record Number: _____ Primary Physician: _____

Date of Birth: ___/___/___ Birth Hospital: _____

Mother's Last Name: _____ Mother's First Name: _____

Pulse Oximetry Screening:

Date of Screening: __/___/___

Age at Time of Screening: _____Days or ____Hours

Result:_Pass/Negative ____Fail/Positive ____Not Performed

Complete this section only if pulse oximetry screen was not performed:

Reason pulse oximetry screening not perform:

____Early Discharge

____Screening Not Indicated due to _____

____Parent Refusal

Screener's Name:_____

Screener's Signature:_____ Date: __/___/___

Mail or Fax this follow-up form to: Oklahoma State Department of Health
Prevention and Preparedness Services
ATT: Newborn Screening Program Coordinator
1000 NE Tenth Street
Oklahoma City, OK 73117-1299
Fax: (405) 271-4892

For questions or referral information, please call the Newborn Screening Program Coordinator at (405) 271-6617 or 1-800-766-2223.

[OAR Docket #19-669; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 567. STATE CENTRAL CANCER REGISTRY

[OAR Docket #19-670]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Reporting
310:567-3-1. Reporting requirements [AMENDED]
310:567-3-2. Diseases to be reported [AMENDED]
310:567-3-3. Methods of reporting [AMENDED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 63 O.S. § 1-551.1 et seq., 63 O.S. § 1-550.4 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The changes require all healthcare reporting facilities to report minimum cancer data elements: (1) Patient demographic, (2) Cancer diagnosis, (3) Facility and (4) Physician Information, and any available text, for patients 0-19 years of age, within 30 days of cancer diagnosis in an electronic format. The rule change does not replace the current reporting requirement, but provides additional reporting of minimum identifying data elements for the assessment of statewide incident cases. Rapid cancer reporting for Oklahoma pediatric and young adult cancer cases will support; pediatric cancer research, community health event assessments, and ultimately the reduction of pediatric cancer mortality.
CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. REPORTING

310:567-3-1. Reporting requirements

All hospitals, clinics, laboratories, pathologists, physicians, or dentists, or facilities providing diagnostic or treatment services in relation to cancer disease or precancerous conditions, shall report in an approved electronic format to the Oklahoma Central Cancer Registry the twenty-two cancer minimum data elements for the purpose of maintaining a statewide, population-based cancer data base. Such information shall include, at a minimum, the following elements:

(1) Patient's name, address, age, race, sex, social security number, hospital identifier or pathology laboratory identifier, or any other identifier for facilities providing diagnostic or treatment services for cancerous and precancerous conditions.

(2) Patient's residential, family, environmental, occupational, lifestyle risk factors, exposure to Agent Orange and medical histories.

(3) Physician's name, diagnosis, stage of disease, histology TNM, method of treatment, and name and address of any facility providing diagnostic or treatment services.

(4) Cancer identification of tumor site, laterality, type and behavior, grade, and diagnostic confirmation

(5) First course and subsequent courses of treatment, recurrence, continuous follow-up and death.

310:567-3-2. Diseases to be reported

All types of cancer will be considered as reportable disease. This will include all in situ, nonmalignant central nervous system tumors ~~skin cancers~~ and the following precancerous ~~and in situ~~ cases:

(1) ~~Moderate or greater cervical dysplasia and carcinoma in situ of the cervix uteri.~~ Intraepithelial neoplasia III of vulva, vagina, anus and larynx;

~~(2) Carcinoma in situ of the female breast.~~

~~(3) Nonmalignant Central Nervous System tumors.~~

(2) Squamous intraepithelial neoplasia III except of cervix and skin.

310:567-3-3. Methods of reporting

(a) The reporting of cancer may be done through automated hospital tumor registries.

(b) If the hospital does not have an automated cancer registry, cancer cases are to be reported manually in the form of case abstracts.

(c) If a biopsy was performed as an out-patient procedure, the pathology laboratory shall report any cases of cancer, or conditions defined in section 310:567-3-2.

(d) By January 1, 1997, all Oklahoma reporting sources shall be initiated. The Oklahoma Central Cancer Registry shall have as its reference date January 1, 1997.

(e) All hospitals, clinics, laboratories, pathologists, physicians or dentists, or all facilities providing diagnostic or treatment services in relation to cancer diseases or precancerous conditions, shall report: ~~all cancer cancer within 180 days of diagnosis.~~

(1) all cancer within 180 days of diagnosis or treatment

(2) and all cancers occurring in patients under 20 years of age within 30 days of diagnosis or treatment.

(f) All hospitals, clinics, laboratories, pathologists, physicians or dentists, or all facilities providing diagnostic or

treatment services in relation to cancer diseases or precancerous conditions, shall have capability to perform quality edits so that all cancer data reported to the Oklahoma Central Cancer Registry meets the 100% accuracy standard.

[OAR Docket #19-670; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 615. AMBULATORY SURGICAL CENTERS

[OAR Docket #19-671]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:615-1-3. General considerations and incorporations by reference [AMENDED]
310:615-1-4. Construction design [AMENDED]
Subchapter 3. Administration and Organization
310:615-3-8. Medications [AMENDED]
Subchapter 5. Minimum Standards [REVOKED]
310:615-5-1. Administration and public areas [REVOKED]
310:615-5-2. Clinical facilities [REVOKED]
310:615-5-3. Surgical facilities [REVOKED]
310:615-5-4. Janitors' closet(s) [REVOKED]
310:615-5-5. Employees' facilities [REVOKED]
310:615-5-6. Details and finishes [REVOKED]
310:615-5-7. Construction, including fire-resistive requirements [REVOKED]
310:615-5-8. Elevators [REVOKED]
310:615-5-9. Mechanical requirements [REVOKED]
310:615-5-10. Electrical requirements [REVOKED]
Subchapter 7. Codes and Standards [REVOKED]
310:615-7-1. General [REVOKED]
310:615-7-2. List of referenced codes and standards [REVOKED]
Appendix D. Flame-Spread and Smoke-Production Limitations of Interior Finishes in Ambulatory Surgical Centers [REVOKED]
Appendix E. Ventilation Requirements for Areas Affecting Patient Care in Ambulatory Surgical Centers [REVOKED]
Appendix F. Filter Efficiencies for Central Ventilation and Air Conditioning Systems in Outpatient Facilities [REVOKED]
Appendix G. Station Outlets for Oxygen and Vacuum (Suction) Systems [REVOKED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 51 O.S. § 24A.1 et seq., 63 O.S. § 2657, et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Outpatient Facilities, 2018 Edition.
National Fire Protection Association (NFPA) 101: Life Safety Code (LSC), 2012 Edition, and 2012 LSC Tentative Interim Amendments (TIA) 12-1, 12-2, 12-3, and 12-4,
NFPA99 Health Care Facilities Code (HCFC), 2012 Edition, excluding chapters 7, 8, 12 and 13, and 2012 HCFC Tentative Interim Amendments 12-2, 12-3, 12-4, 12-5 and 12-6 adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.
Incorporating rules:
310:615-1-3
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 NE 10th St., Oklahoma City, OK 73117.
GIST/ANALYSIS:
An amendment is provided at 310:615-3-8(b) to align with HB 1826 4/20/2011. This revision changes the frequency of visits that a consultant pharmacist is required to make to an ambulatory surgical center from the same as required of hospitals to only once per month.
This action amends several sections of this chapter with most current national guidelines and removes outdated references and guidelines. At 310:615-1-3 an incorporation by reference is inserted to address the latest standards used by architects and the Centers for Medicare and Medicaid Services (CMS). This update includes the incorporation by reference to update the FGI 2018 Guidelines for Design and Construction of Outpatient Facilities, 2018 Edition, which replaces the reference to the FGI 2014 edition. Also incorporated by reference are the National Bureau of Standards Fire Safety Evaluation System to the National Fire Protection Association's NFPA 101A Guide on Alternative Approaches to Life Safety, 2010 Edition. The revision explicitly identifies the applicable portions of the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition that applies to design and construction requirements. An incorporation by reference is inserted to address a secondary incorporation by reference that was present in the NFPA99, 2012 Edition. The heating and ventilating systems standards at the American Society of Heating, Refrigerating and Air-Conditioning Engineers, ASHRAE 170, 2008 Edition, are referenced by NFPA99, 2012 Edition. This revision aids architects so that they can design based on the requirements applied by the CMS. By updating the references to NFPA 99 and ASHRAE we avoid facilities designed to meet state requirements but that do not meet CMS requirements.
CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

310:615-1-3. General considerations and incorporations by reference

(a) The following national standards are incorporated by reference:

(1) Facility Guidelines Institute (FGI): Guidelines for Design and Construction of ~~Hospitals and~~ Outpatient Facilities, ~~2014~~2018 Edition; and

(2) National Fire Protection Association (NFPA)101: Life Safety Code (LSC), 2012 Edition, and 2012 LSC Tentative Interim Amendments (TIA) 12-1, 12-2, 12-3, and 12-4; and NFPA99 Health Care Facilities Code

(HCFC), 2012 Edition, excluding chapters 7, 8, 12 and 13, and 2012 HCFC TIA 12-2, 12-3, 12-4, 12-5 and 12-6 adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

(b) Oklahoma statutes prevail if there is conflict between the FGI Guidelines and Oklahoma statutes. For Medicare-certified ambulatory surgical centers, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(c) An ambulatory surgical center may submit a request for exception or temporary waiver if the FGI Guidelines create an unreasonable hardship, or if the design and construction for the ambulatory surgical center property offers improved or compensating features with equivalent outcomes to the FGI Guidelines.

(d) The Department may permit exceptions and temporary waivers of the FGI Guidelines if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 2657 et seq., this Chapter, and the following:

(1) Any ambulatory surgical center requesting an exception or temporary waiver shall apply in writing on a form provided by the Department and pay the exception to or temporary waiver of FGI Guidelines fee set in OAC 310:615-1-3.1. The form shall include:

(A) The FGI Guidelines section(s) for which the exception or temporary waiver is requested;

(B) Reason(s) for requesting an exception or temporary waiver;

(C) The specific relief requested; and

(D) Any documentation which supports the application for exception.

(2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:

(A) Compliance with 63 O.S. Section 2657 et seq.;

(B) The level of care provided;

(C) The impact of an exception on care provided;

(D) Alternative policies or procedures proposed; and

(E) Compliance history with provisions of the FGI Guidelines, Life Safety Code and this Chapter.

(3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.

(4) If the Department finds that a request is incomplete, the Department shall advise the ambulatory surgical center in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.

(5) An ambulatory surgical center which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the ambulatory surgical center is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and the public.

(e) Documentation of the ambulatory surgical center governing body's approval of the functional program shall be sufficient to meet the requirements in this Chapter relating to Department approval of the functional program.

310:615-1-4. Construction design

(a) **New construction.**

(1) Prior to construction commencement of a new ambulatory surgical center, or of additions, alterations, remodeling of existing facilities or of the remodeling of any facility for the purpose of establishing an ambulatory surgical center, proposed construction documents prepared by an architect licensed by the Board of Governors, State of Oklahoma, containing complete plans and specifications, shall be submitted to the Department for review and approval.

(2) All engineering requirements established for proposed projects shall be prepared by professional engineers registered to practice in the State of Oklahoma.

(3) Proposed construction documents shall be of such detail as to allow complete functional and construction evaluation, including site use.

(b) **Modernization projects.**

~~(1)~~ Where modernization or replacement work is done within an existing facility, only the scope of the modernization project ~~all new work or additions~~ shall comply with applicable sections of this Chapter. ~~document and with appropriate parts of NFPA 101, covering New Health Care occupancies. Where major structural elements make total compliance impractical or impossible, exceptions may be considered.~~

~~(2) When construction is complete the facility shall satisfy functional requirements for an Ambulatory Surgical Center in an environment that will provide acceptable care and safety to all occupants.~~

~~(3) In modernization projects and additions to existing facilities, only that portion of the total facility affected by the project shall comply with applicable sections of this document and appropriate parts of NFPA 101 covering New Health Care occupancies.~~

~~(4) Those existing portions of the facility which are not included in modernization or renovation, but which are essential to the functioning of the complete facility, as well as existing building areas that receive less than substantial~~

~~amounts of new work shall comply with that section of NFPA 101 for Existing Health Care Occupancies.~~

~~(5) When a building is converted from one occupancy to another, it shall comply with the new occupancy requirements.~~

~~(6) When parts of an existing facility essential to continued operation cannot comply with all standards of this document, those standards may be waived if patient care and safety are not jeopardized.~~

~~(7) Modernization, alteration or new additions shall not reduce the safety level existing prior to the beginning of the new work.~~

~~(8) Approval may be given for renovations for less than an entire structure under these regulations because of financial consideration if the facility and occupant safety is not jeopardized by the remaining non-conforming sections. Approval will be limited to those fire sections which can be completely separated by a fire rated construction envelope of not less than two hour fire resistance containing approved labeled fire doors, if required, of class B, 1 1/2 hour construction.~~

~~(c) **Special design standards for the handicapped.**~~

~~(1) Facilities shall be accessible to the Handicapped.~~

~~(2) Accessibility shall be under the provisions of American National Standards Institute (ANSI) A117.1 or Uniform Federal Accessibility Standards (UFAS).~~

~~(d) **Provisions for disasters.**~~

~~(1) Facilities shall be designed and constructed to withstand the force assumptions of the local building code.~~

~~(2) Multi-story buildings, subdivided into separate units by seismic joints, shall provide an exit stairway for evacuation without crossing seismic joints.~~

~~(3) Construction and coverage of all seismic joints shall be designed to minimize passage of fire and/or smoke horizontally and vertically.~~

~~(4) Structural design shall be such that it will protect occupants and provide continued essential services where a history of tornadoes, flooding or earthquakes exist. Provisions taken against damage from seismic tremors does not insure adequate protection from wind damage.~~

~~(5) New facilities shall not locate in designated flood plains.~~

~~(e) **Codes and standards.** Codes and standards which have been referenced in whole or in part in various sections of this document are listed in Subchapter 7, Codes and standards. Names of originators are also included for information. The issues available at the time of publication are used. Later issues will normally be acceptable where requirements for function and safety are not reduced; however, editions of different dates may have portions renumbered or retitled. Care must be taken to insure that appropriate sections are used.~~

~~(f) **Equivalency.**~~

~~(1) This Chapter shall not be construed as restricting or limiting innovations that provide an equivalent level of performance, provided other elements or systems are not compromised.~~

~~(2) FSES evaluation shall be considered for possible equivalencies when existing structural conditions make compliance with NFPA 101 impractical, provided the entire building meets FSES code.~~

SUBCHAPTER 3. ADMINISTRATION AND ORGANIZATION

310:615-3-8. Medications

(a) Medications shall be administered only on the order of any person authorized by state law to so prescribe [Nurse Practice Act 59 O.S. 1981 §567.3a].

(b) The center shall provide proper storage, safeguarding, preparation, and dispensing of medications in a pharmacy or medication room which is under the supervision of a registered pharmacist who is either an employee of the center or serves as a consultant pharmacist, who shall be required to visit the ambulatory surgical center no more than one time per month.~~in the same manner as required of hospitals in Chapter 667 of this Title.~~

SUBCHAPTER 5. MINIMUM STANDARDS [REVOKED]

310:615-5-1. Administration and public areas [REVOKED]

~~(a) **Entrance.** A covered entrance will be located at grade level, sheltered from the weather and accessible to the handicapped.~~

~~(b) **Public services.** Public services shall include:~~

~~(1) Accessible wheelchair storage.~~

~~(2) Reception and information center.~~

~~(3) Waiting space. When pediatric services are provided, provisions shall be made for separation of pediatric and adult patients.~~

~~(4) Accessible rest rooms.~~

~~(5) Accessible public telephone.~~

~~(6) Accessible drinking fountain(s).~~

~~(c) **Interview space(s).** The center shall provide interview spaces for private interviews relating to social service, credit, and admissions.~~

~~(d) **General or individual office(s).** The center shall provide general and individual offices for business transactions, records, and administrative and professional staffs.~~

~~(e) **Medical records room.** The center shall have a medical records room which is equipped for dictating, recording, security and retrieval.~~

~~(f) **Special storage.** The center shall have special storage which includes locking drawers or cabinets for staff personal effects.~~

~~(g) **General storage facilities.** The center shall have general storage facilities for office supplies, sterile supplies, pharmaceutical supplies, and housekeeping supplies and equipment.~~

~~(h) **Transfer agreement.** A formal transfer agreement must be in effect between the ambulatory surgical center and a general hospital located not more than a twenty minute travel distance from the center, or all physicians performing surgery in the ambulatory surgical center must have admitting privileges at such a hospital.~~

310:615-5-2. Clinical facilities [REVOKED]

~~(a) **General purpose examination room(s).** For examinations as may be indicated by narrative program, the center shall have a minimum floor area of 80 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). Arrangement shall permit at least 2' 6" clearance at each side and at the foot of the examination table. A lavatory or sink equipped for hand washing and a counter or shelf space for writing shall be provided.~~

~~(b) **Treatment room(s).** Rooms for minor surgical and cast procedures (if provided) shall have a minimum floor area of 120 square feet, excluding vestibule, toilet, closet, and work counter (whether fixed or movable). The minimum floor dimension shall be 10 feet. A lavatory or sink equipped for hand washing and a counter or shelf space for writing shall be provided.~~

310:615-5-3. Surgical facilities [REVOKED]

~~The number of operating rooms, recovery beds and the sizes of the service areas shall be based upon the expected surgical workload. The surgical suite shall be located and arranged to preclude unrelated traffic through the suite. The suite shall provide the following elements.~~

~~(1) **Operating rooms.**~~

~~(A) All ambulatory surgical center operating rooms shall be constructed and maintained to conform to Standard 70, National Electrical Code, Standard 99, Chapter 3, Use of Anesthetics (Flammable and Nonflammable) and Standard 99, Nonflammable Medical Gas Systems.~~

~~(B) Any room or space in which flammable anesthetics or volatile flammable materials are stored or used, shall be considered a hazardous area.~~

~~(C) Facilities electing to use only nonflammable anesthetic agents or to provide a mixed facility using both flammable and nonflammable anesthetics, must document the recommendations and approval of such determination by the medical staff of the facility and the adoption of such a regulation by the facility's governing body. Precautionary signs shall be posted at conspicuous points throughout the surgical suite and within the operating rooms. All such signs must be large enough to be read from at least 8' distance.~~

~~(D) Each room shall have a minimum clear area of 250 square feet exclusive of fixed and movable cabinets and shelves. An emergency communications system connecting with the surgical suite control station shall be provided.~~

~~(2) **Recovery room(s).** Room(s) for post anesthesia recovery of surgical patients shall be provided and shall contain a drug distribution station, hand washing facilities, charting facilities, clinical sink and storage space for supplies and equipment. At least three feet shall be provided at each side and at the foot of each bed as needed for work and circulation. Should pediatric surgery be a part of the program, separation by partition or curtain from the adult section, and space for the parents shall be provided. A designated, supervised recovery lounge shall be provided for patients who do not require post anesthesia recovery but need additional time for vital signs to stabilize before leaving the facility. The lounge shall contain a control station, space for family members, and provisions for privacy. It shall have patient access to rest rooms.~~

~~(3) **Service areas.** Individual rooms shall be provided when so noted; otherwise, alcoves or other open spaces which will not interfere with traffic may be used. The following services may be provided:~~

~~(A) Control station shall be located to permit visual surveillance of all traffic which enters the operating suite.~~

~~(B) Sterilizing facility(ies) with high speed autoclave(s) shall be conveniently located to serve all operating rooms. When the narrative program indicates that adequate provisions have been made for replacement of sterile instruments during surgery, sterilizing facilities in the surgical suite will not be required.~~

~~(C) Drug distribution station shall be provided for preparation of medications to be administered to patients.~~

~~(D) Two scrub facilities shall be provided near the entrance to each operating room; however, two scrub stations may serve two operating rooms if the scrub stations are located adjacent to the entrance of each operating room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts.~~

~~(E) The soiled workroom for the exclusive use of the surgical suite staff (or a soiled holding room that is part of a system for the collection and disposal of soiled materials) shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle. A soiled holding room shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.~~

~~(F) Fluid waste disposal facilities shall be conveniently located with respect to the general operating rooms. A clinical sink or equivalent equipment in a soiled workroom or in a soiled holding room would meet this requirement.~~

~~(G) A clean workroom is required when clean materials are assembled within the surgical suite prior to use.~~

~~(H) A clean workroom shall contain a work counter, sink equipped for hand washing, and space for clean and sterile supplies.~~

~~(I) A clean supply room shall be provided when the narrative program defines a system for the storage and distribution of clean and sterile supplies which would not require the use of a clean workroom.~~

~~(J) Anesthesia storage facilities, unless the narrative program and the governing body prohibits the use of flammable anesthetics, in a separate room shall be provided for storage of flammable gases in accordance with the requirements detailed in Sections 310:615-5-9(d)(2)(H) and 310:615-5-10(f)(1) and Chapter 13, NFPA 99.~~

~~(K) Space for reserve storage of nitrous oxide and oxygen cylinders shall be provided. Such space shall be free of stored combustible materials.~~

~~(L) Appropriate areas shall be provided as staff clothing change areas for male and female personnel (orderlies, technicians, nurses, and doctors) working within the surgical suite. The areas shall contain lockers, showers, toilets, lavatories equipped for hand washing, and space for donning scrub suits and boots. These areas shall be arranged to provide a one way traffic pattern so that personnel entering from outside the surgical suite can change, shower, gown, and move directly into the surgical suite. Space for removal of scrub suits and boots shall be designed so that it will avoid physical contact with clean personnel.~~

~~(M) A separate area shall be provided where ambulatory patients change from street clothing into hospital gowns and are prepared for surgery. This shall include clothing change or gowning area with a traffic pattern similar to that of the staff clothing change area. Provisions shall be made for securing patient's personal effects.~~

~~(N) An area for stretcher and wheelchair storage shall be out of direct line of traffic.~~

~~(O) The center shall provide convenient access to and use of emergency crash carts at both the surgical and recovery areas.~~

~~(P) Lounge and toilet facilities for surgical staff shall be provided in ambulatory surgical centers having three or more operating rooms and shall be located to permit use without leaving the surgical suite. A nurses' toilet room shall be provided near the recovery room(s).~~

~~(Q) A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the surgical suite.~~

310:615-5-4. Janitors' closet(s) [REVOKED]

~~Each janitor's closet shall contain a floor receptor or service sink and storage for housekeeping supplies and equipment. Provide at least one janitors' closet per floor.~~

310:615-5-5. Employees' facilities [REVOKED]

~~Locker rooms, lounges, toilets, or shower facilities, as required, shall be provided to accommodate the needs of all personnel and volunteers.~~

310:615-5-6. Details and finishes [REVOKED]

~~(a) **Details.**~~

~~(1) Minimum public corridor width shall be 6' 0", except corridors in the operating room section where patients are transported on stretchers or beds, shall be 8' 0".~~

~~(2) Each building shall have at least two exits remote from each other. Other details relating to exits and fire safety requirements shall be in accordance with NFPA 101 and this Chapter.~~

~~(3) When the ambulatory surgical center is within another facility that does not comply with or exceeds the fire safety requirements of NFPA 101, there shall not be less than one hour separation between the ambulatory surgical center and the other sections.~~

~~(4) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.~~

~~(5) Toilet rooms in surgery and/or recovery areas for patient use shall be equipped with doors and hardware that permit access from the outside in case of an emergency.~~

~~(6) The minimum door width for patient use shall be 2' 10". Rooms needing access for beds or stretchers shall be 3' 8". All rooms subject to occupancy by staff, patients or visitors shall comply with ANSI A117.1 or UFAS.~~

~~(7) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. Large walk in type closets are considered as occupiable spaces.~~

~~(8) Doors, sidelights, borrowed lights, and windows in which the glazing extends down to within 18" of the floor (thereby creating possibility of accidental breakage by pedestrian traffic) shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used in wall openings, play rooms and exercise rooms unless otherwise required for fire safety. Glazing materials used for shower doors and bath enclosures shall be safety glass or plastic.~~

~~(9) Paper towel dispensers and waste receptacles shall be provided at all hand washing facilities.~~

~~(10) Where labeled fire doors are required, these shall be certified by an independent testing laboratory as meeting the construction requirements equal to those for fire doors in NFPA Standard 80. Reference to a labeled fire door shall be construed to include labeled frame and hardware.~~

~~(11) Radiation protection for x ray and gamma ray installations shall comply with standards for hospital construction.~~

~~(12) Dumbwaiters, conveyors, and material handling systems shall not open into a corridor or exit way but shall open into a room enclosed by construction having a~~

~~fire resistance of not less than one hour and provided with Class C, 3/4 hour labeled fire doors. Service entrance doors to vertical shafts containing dumbwaiters, conveyors, and material handling systems shall benot less than Class B, 1 1/2 hour labeled fire doors.~~

~~(13) Elevator shaft openings shall have Class B, 1 1/2 hour labeled fire doors.~~

~~(14) Minimum ceiling heights shall be 7' 10" with the following exceptions:~~

~~(A) Boiler rooms shall have ceiling clearance of not less than 2' 6" above the main boiler header and connecting piping.~~

~~(B) Radiographic and other ceiling mounted equipment shall have ceilings of sufficient height to accommodate the equipment and/or fixtures.~~

~~(C) Ceilings in corridors, storage rooms, rest rooms, and other minor rooms shall not be less than 7' 8".~~

~~(D) Tracks, rails and pipes suspended along the path of normal traffic shall be not less than 6' 8" above the floor.~~

~~(15) Rooms containing heat producing equipment shall be insulated and ventilated to prevent adjacent floor or wall surfaces from exceeding a temperature 10 degrees above ambient room temperature.~~

~~(16) An approved automatic smoke detection system shall be provided in all corridors, lobbies and general waiting areas. Location of smoke detectors shall be no greater than 30 feet spacing on centers and no more than 15 feet from any wall. All Automatic Smoke Detection Systems shall be electrically inter connected to the fire alarm system.~~

~~(b) **Finishes.**~~

~~(1) Cubicle curtains and draperies shall be noncombustible or rendered flame retardant and shall pass both the large- and small-scale tests of NFPA Standard 701.~~

~~(2) Flame spread and smoke developed ratings of finishes are covered under Section 310:615-5-7(b).~~

~~(3) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. In all areas frequently subject to wet-cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions.~~

~~(4) Floors in areas and rooms in which flammable anesthetic agents are stored or administered to patients shall comply with NFPA Standard 56A. Conductive flooring may be omitted from surgical areas provided that a written resolution is signed by the governing board, stating that no flammable anesthetic agents will be used in these areas and appropriate notices are permanently and conspicuously affixed to the wall in each such area and room.~~

~~(5) Wall finishes shall be washable.~~

~~(6) Ceilings shall be cleanable, and those in surgical areas shall be finished, covering all overhead duct work and piping, washable and without crevices that can retain dirt particles. Finished ceilings may be omitted in mechanical and equipment spaces, shops and general storage areas, unless required for fire resistive purposes in accordance with NFPA 70 and NFPA 99.~~

310:615-5-7. Construction, including fire-resistive requirements [REVOKED]

~~(a) **Construction.** Construction of freestanding ambulatory surgical centers shall comply with NFPA 101, Life Safety Code, 1991 edition, section 12-6, along with applicable building codes and minimum requirements contained in this Chapter. Ambulatory surgical centers which are an integral part of a hospital or connected to a hospital and which accommodate hospital ambulatory patients shall comply with the construction requirements for general hospitals.~~

~~(b) **Interior finishes.** Interior finish materials shall comply with the flame spread limitations and the smoke production limitations shown in Appendix G of this Chapter. If a separate under layment is used with any floor finish materials, the under layment and the finish material shall be tested as a unit or equivalent provisions made to determine the effect of the under layment on the flammability characteristics on the floor finish material. Tests shall be performed by an independent testing laboratory.~~

~~(c) **Insulation materials.** Building insulation materials, unless sealed on all sides and edges, shall have a flame spread rating of 25 or less and a smoke developed rating of 150 or less when tested in accordance with ASTM Standard E84.~~

310:615-5-8. Elevators [REVOKED]

~~(a) **Required.** All buildings having examination rooms, treatment rooms, or diagnostic services located on other than the main entrance floor, shall have electric or electro hydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated.~~

~~(1) Cars shall have a minimum inside floor dimension of not less than 5prime; 0Prime. The car door shall have a clear opening of not less than 3prime 0Prime.~~

~~(2) Elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of ± 1/2Prime.~~

~~(3) Elevators, except freight elevators, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.~~

~~(4) Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.~~

~~(b) **Field inspection and tests.** Inspections and tests shall be made, and the owner shall be furnished written certification that the installation meets the requirements set forth in this section and all applicable safety regulations and codes.~~

310:615-5-9. Mechanical requirements [REVOKED]

~~(a) **General.**~~

~~(1) Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the design engineer or his/her representative that the installation and performance of these systems conform to the requirements of the plans and specifications. Test results shall be documented for maintenance files.~~

~~(2) Upon completion of the installation contract, the owner shall be furnished with a complete set of manufacturer's operating, maintenance, and preventive maintenance instructions, and parts list with numbers and description for each piece of equipment. Operating staff personnel shall be provided with instruction in the operational use of systems and equipment as required.~~

~~(b)~~ **~~Thermal and acoustical insulation.~~**

~~(1) Thermal and acoustical insulation shall be provided to conserve energy, protect personnel, prevent vapor condensation and reduce noise and vibration for the following within the building:~~

~~(A) Boilers, smoke breaching, and stacks.~~

~~(B) Steam supply and condensate return piping.~~

~~(C) Hot water piping above 180° F. (82° C.) and all hot water heaters, generators, and convertors.~~

~~(D) Hot water piping above 125° F. (52° C.) which is exposed to contact by patients.~~

~~(E) Chilled water refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point.~~

~~(F) Water supply and drainage piping on which condensation may occur.~~

~~(G) Air ducts and casings with outside surface temperature below ambient dew point.~~

~~(H) Domestic hot water piping, water heaters, tanks, generators and converters.~~

~~(I) Heating, ventilating, air conditioning and air-handling duct systems (including ducts, plenums and casings) with surface temperatures 9° F (5° C) above or below the ambient dry bulb or dew point temperatures.~~

~~(J) Other piping ducts, and equipment as necessary to maintain the efficiency of the systems.~~

~~(2) Insulation may be omitted from hot water and steam condensate piping not subject to contact by patients when such insulation is unnecessary for preventing excessive system heat loss or excessive heat gain.~~

~~(3) Insulation on cold surfaces shall include an exterior vapor barrier.~~

~~(4) Insulation, including finishes and adhesives on the exterior surfaces of ducts, pipes, and equipment, shall have a flame-spread rating of 25 or less and a smoke-developed rating of 150 or less as determined by an independent testing laboratory in accordance with ASTM Standard E-84. (See Section 310:615-5-9(b)(5) for exception.)~~

~~(5) Linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Publication No. 181. These linings, including coatings and adhesives, and insulation on exterior surfaces of pipes and ducts in building spaces used as air supply plenums, shall have a flame-spread rating of 25 or less and a smoke-developed rating of 50 or less as determined by an independent testing laboratory in accordance with ASTM Standard E-84.~~

~~(6) Duct linings shall not be used in systems supplying operating room and recovery room units unless terminal filters of at least 90 percent efficiency are installed downstream of linings.~~

~~(7) Asbestos insulation shall not be used in health facilities.~~

~~(8) Existing accessible insulation within facilities to be modernized shall be inspected, repaired and/or replaced.~~

~~(c)~~ **~~Steam and hot water systems.~~**

~~(1)~~ **~~Boilers.~~** ~~Boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute, to supply the normal requirements of all systems and equipment.~~

~~(2)~~ **~~Valves.~~** ~~Supply and return mains and risers of heating and steam systems shall be equipped with valves to isolate the various sections of each system. Each piece of equipment shall have valves at the supply and return ends. Vacuum condensate returns need not be valved at each piece of equipment.~~

~~(d)~~ **~~Air conditioning, heating, and ventilating systems.~~**

~~(1) Air conditioning, heating and ventilating systems shall comply with Appendix E of this Chapter. Filter efficiency requirements are contained in Appendix F of this Chapter. The systems shall be designed to provide the following temperatures and humidities in the areas in the appendices. For all other occupied areas a minimum design temperature of 75° F. (24° C.) at winter design conditions shall be assumed.~~

~~(2) All air supply and air exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Appendix E of this Chapter shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.~~

~~(A) Outdoor intakes shall be located as far as practical but not less than 25prime 0Prime; from exhaust outlets of ventilating systems, combustion equipment stacks, medical surgical vacuum systems, plumbing vents stacks, or from areas which may collect vehicular exhaust and other noxious fumes. The bottom of outdoor air intakes serving central systems shall be located as high as practical but not less than 6Prime 0Prime; above ground level, or if installed above the roof, 3prime 0Prime; above the roof level.~~

~~(B) The ventilation systems shall be designed and balanced to provide the pressure relationship as shown in Appendix E of this Chapter.~~

~~(C) All air supplied to operating rooms shall be delivered at or near the ceiling of the area served, and all exhaust air from the area shall be removed near floor level. At least two exhaust outlets shall be used in all operating rooms.~~

~~(D) The bottoms of ventilation openings shall be not less than 3" above the floor of any room.~~

~~(E) Corridors shall not be used to supply air to or exhaust air from any room, except that air from corridors may be used to ventilate bathrooms, toilet rooms, janitors' closets, and small electrical or telephone closets opening directly onto corridors.~~

~~(F) All central ventilation or air conditioning systems shall be equipped with filters having efficiencies no less than those specified in Appendix F of this Chapter. Where two filter beds are required, Filter Bed No. 1 shall be located upstream of the air conditioning equipment, and Filter Bed No. 2 shall be downstream of the supply fan, any recirculating spray water systems, and water reservoir type humidifiers.~~

~~(i) Where only one filter bed is required, it shall be located upstream of the air conditioning equipment unless an additional pre filter is employed. In this case, the pre filter shall be upstream of the equipment, and the main filter may be located farther downstream.~~

~~(ii) All filter efficiencies shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Standard 52 68.~~

~~(iii) Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing duct work. All joints between filter segments and the enclosing duct work shall be gasketed or sealed to provide a positive seal against air leakage.~~

~~(iv) A manometer shall be installed across each filter bed serving sensitive areas or central air systems.~~

~~(G) Air handling duct systems shall meet the requirements of NFPA Standard 90A, except that sensitive area duct systems shall comply with Section 310:615 5 9(b)(6).~~

~~(H) The ventilation system for anesthesia storage rooms shall conform to the requirements of NFPA Standard 56A, including the gravity option. The mechanically operated air systems required of Section 310:615 5 9(d)(2) is optional in this room only.~~

~~(e) **Plumbing and other piping systems.** All plumbing systems shall be designed and installed in accordance with the requirements of PHCC National Standard Plumbing Code, Chapter 14, "Medical Care Facility Plumbing Equipment."~~

~~(1) **Plumbing fixtures.**~~

~~(A) The material used for plumbing fixtures shall be of nonabsorbable acid resistant material.~~

~~(B) The water supply spout for lavatories and sinks required in patient care areas shall be mounted so that its discharge point is a minimum distance of 5Prime; above the rim of the fixture. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be systems trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall not exceed 4 1/2Prime; in length, except that handles on scrub sinks and clinical sinks shall be not less than 6Prime; long.~~

~~(C) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.~~

~~(2) **Water supply systems.**~~

~~(A) Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.~~

~~(B) Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.~~

~~(C) Back flow preventors (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitors' sinks, bedpan flushing attachments, autopsy tables, and on all other fixtures to which hoses or tubing can be attached.~~

~~(D) Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.~~

~~(E) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower, bathing, and hand washing facilities shall not exceed 110° F. (43° C.).~~

~~(3) **Drainage systems.**~~

~~(A) Floor drains shall not be installed in operating rooms.~~

~~(B) Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and State regulations.~~

~~(4) **Medical gases.** Nonflammable medical gas system installations shall be in accordance with the requirements of NFPA 56A and 56F. See Appendix G of this Chapter for rooms which require station outlets.~~

~~(5) **Suction.** Clinical vacuum (suction) system installations shall be in accordance with the requirements of Compressed Gas Association Pamphlet No. P 2.1. See Appendix G of this Chapter contains for rooms which require station outlets.~~

~~(6) **Service outlets.** Service outlets for central housekeeping vacuum systems, if used, shall not be located within operating rooms.~~

310:615-5-10. Electrical requirements [REVOKED]

~~(a) **General.**~~

~~(1) All material, including equipment, conductors, controls, and signaling devices, shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with available standards of Underwriters' Laboratories, Inc., or other similarly established standards.~~

~~(2) All electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified. A written record of performance~~

~~tests on special electrical systems and equipment shall be supplied to the owner. Such tests shall show compliance with the governing codes and shall include conductive floors, isolated power systems, grounding continuity, and alarm systems.~~

~~(b) **Switchboards and power panels.** Circuit breakers or fusible switches that provide disconnecting means and over current protection for conductors connected to switchboards and panel boards shall be enclosed or guarded to provide a dead front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboards shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry, ventilated space free of corrosive fumes or gases. Overload protective devices shall be suitable for operating properly in the ambient temperature conditions.~~

~~(c) **Panel boards.** Panel boards serving lighting and appliance circuits shall be located on the same floor as the circuits they serve.~~

~~(d) **Lighting.**~~

~~(1) All spaces occupied by people, machinery, and equipment within buildings, approaches to buildings, and parking lots shall have lighting.~~

~~(2) Operating rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical tables. Each fixed special lighting unit at the tables, except for portable units, shall be connected to an independent circuit.~~

~~(e) **Receptacles (convenience outlets).**~~

~~(1) **Anesthetizing locations.** Each operating room shall have at least three receptacles of the types described in NFPA Standard 56A. In locations where mobile X-ray is used, an additional receptacle, distinctively marked for X-ray use, shall be provided. Where capacitive discharge or battery-powered X-ray units are used, these receptacles will not be required.~~

~~(2) **Rooms other than anesthetizing locations.** Duplex grounding type receptacles shall be installed in all areas in sufficient quantities for the tasks to be performed. A minimum of one duplex receptacle for each wall shall be installed in each work area or room other than storage or lockers. Each examination and work table shall have access to a minimum of two duplex receptacles.~~

~~(3) **Corridors.** Duplex receptacles for cleaning equipment and general use shall be installed approximately 50' 0" apart in all corridors and within 25' 0" of ends of corridors.~~

~~(f) **Equipment installation in special areas.**~~

~~(1) **Installation in anesthetizing locations.** All electrical equipment and devices, receptacles, wiring, and conductive flooring, if used, shall comply with NFPA Standard 56A, except that a static type line isolation monitor will be permitted.~~

~~(2) **X-ray installations.** Fixed and mobile X-ray equipment installations shall conform to Article 660 of NFPA Standard 70.~~

~~(3) **Special grounding system.** In areas (when indicated by the program) where a patient may be treated with an internal probe or catheter connected to the heart, the patient bed area ground system shall comply will the following:~~

~~(A) A patient ground point shall be provided within 10' 0Prime; of each bed. The patient ground is to assure that under normal conditions all electrically conductive surfaces of equipment and furnishings within reach of the patient will be at the same electrical potential or not exceeding ten millivolts differential. This requirement is not intended to apply to devices and utensils such as bedpans and other small portable non-electrical devices.~~

~~(B) One patient ground point may serve more than one patient, but one patient shall not be served by more than one patient ground point.~~

~~(C) The grounding conductor connecting any receptacle serving a patient and the patient ground point shall not exceed the equivalent resistance of 15' 0Prime; of No. 12 AWG copper conductor.~~

~~(D) Exposed metal building surfaces or utility piping within reach of the patient or others who may touch him shall be grounded at the patient ground point or to another room ground point.~~

~~(E) A reference ground point shall be established in the electrical supply panel.~~

~~(F) The patient ground point and the room ground point where separated shall be interconnected by a continuous, insulated, copper conductor not smaller than No. 10 AWG and similarly connected to the reference ground or may be individually connected to the reference ground point provided that the ground conductor resistance does not exceed that of 15' 0Prime; or No. 12 AWG copper conductor.~~

~~(G) Receptacle ground terminals shall be connected to the patient ground point or to the reference ground point provided that grounding conductor resistance to the reference ground point does not exceed that of 15' 0Prime; of No. 12 AWG copper conductor.~~

~~(H) Grounding of all metallic raceways shall be by means of grounding bushings on all conduit terminations at the panel board and by means of an insulated, continuous, stranded, copper grounding conductor, not smaller than No. 12 AWG extended from the grounding bus in the panel board to the conduit grounding bushings.~~

~~(I) Grounding of metallic switch and receptacle plates shall be provided by means of the mounting screw connections to the device mounting yokes.~~

~~(g) **Emergency lighting.** Automatic emergency lighting shall be provided in each operating room, each recovery room and in ways of exits to make egress from the building safer in the event of power failure.~~

~~(h) **Fire alarm systems.** A manually operated electrically supervised fire alarm system shall be installed in each facility that has a total floor area of more than 5,000 square feet.~~

~~(i) **Emergency power requirements.**~~

~~(1) Ambulatory surgical centers that allow inhalation anesthetics administered in any concentration, or if patients require electrical life support equipment, shall provide electrical services conforming to Type I System, NFPA 99, Chapter 13.~~

~~(2) Ambulatory surgical centers that do not administer inhalation anesthetics in any concentration, or have no patients requiring electrical life support equipment, shall be permitted to use a battery system or self-contained battery integral with equipment, conforming to the Type III System, NFPA 99, Chapter 13.~~

SUBCHAPTER 7. CODES AND STANDARDS [REVOKED]

310:615-7-1. General [REVOKED]

~~Nothing stated herein shall relieve the sponsor from compliance with building codes, State safety glass requirements, ordinances, and regulations which are enforced by city, county, or State jurisdictions. Where such codes, ordinances, and regulations are not in effect, the sponsor shall consult one of the national building codes generally used in the area for all components of the building type which are not specifically covered by these minimum requirements, provided that the requirements of the national code are consistent with the minimum requirements set forth herein.~~

310:615-7-2. List of referenced codes and standards [REVOKED]

~~Editions of publications, of year indicated, containing codes and standards which have been used in whole or in part as references in various sections of the minimum requirements in this Chapter, are listed below.~~

~~(1) American National Standards Institute (ANSI):~~

~~(A) Standard A17.1 American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Stairs.~~

~~(B) Standard A117.1 American Standard Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped.~~

~~(2) American Society for Heating, Refrigeration and Air Conditioning Engineers (ASHRAE). Handbook of Fundamentals. Standard 52-76 Method of Testing Air Cleaning Devices used in General Ventilation for Removing Particulate Matter.~~

~~(3) American Society for Testing and Materials (ASTM). Standard No. E 84, "Method of Test for Surface Burning Characteristics of Building Materials."~~

~~(4) Building Officials and Codes Administrators International, Inc. The BOCA Basic Building Code.~~

~~(5) Code of Federal Regulations. Title 29, Part 1910, Employee Safety and Health.~~

~~(6) Compressed Gas Association (CGA). Pamphlet P-2-1 (1967), "Standard for Medical Surgical Vacuum Systems in Hospitals."~~

~~(7) General Services Administration, Department of Defense, Department of Housing and Urban Development, and U.S. Postal Service. Standards for Uniform Federal Accessibility (UFAS).~~

~~(8) Illuminating Engineering Society of North America (IESNA). IESNA Publication CP29, Lighting for Health Facilities.~~

~~(9) International Conference of Building Officials (ICBO). Uniform Building Code.~~

~~(10) National Association of Plumbing Heating Cooling Contractors (PHCC).~~

~~(11) National Council on Radiation Protection (NCRP):~~

~~(A) Medical X-ray and Gamma ray Protection for Energies up to 10 MeV Equipment Design and Use Radiation Protection Design Guidelines for 0.1-100 MeV Particle Accelerator Facilities.~~

~~(B) Medical X-Ray and Gamma Ray Protection for Energies up to MeV Structural Shielding Design and Evaluation.~~

~~(12) National Fire Protection Association (NFPA)~~

~~(A) Standard 20, Centrifugal Fire Pumps.~~

~~(B) Standard 70, National Electric Code.~~

~~(C) Standard 72A, Installation, Maintenance and use of Local Protective Signaling Systems.~~

~~(D) Standard 72E, Automatic Fire Detectors.~~

~~(E) Standard 80, Fire Doors and Windows.~~

~~(F) Standard 82, Incinerators, Waste and Linen Handling Systems and Equipment.~~

~~(G) Standard 90A, Installation of Air Conditioning and Ventilation Systems.~~

~~(H) Standard 99, Chapter 3, Use of Anesthetics (Flammable and nonflammable).~~

~~(I) Standard 99, Chapter 7, Laboratories in Health Related Institutions.~~

~~(J) Standard 99, Nonflammable Medical Gas Systems.~~

~~(K) Standard 99, Chapter 9, Safe Use of Electricity in Patient Care Areas of Hospitals.~~

~~(L) Standard 99, Chapter 13, Ambulatory Health Care Requirements.~~

~~(M) Standard 101, Life Safety Code.~~

~~(N) Standard 110, Emergency and Standby Power Systems.~~

~~(O) Standard 253, Method for Critical Radiant Flux of Floor Covering Systems using a Radiant Heat Energy Source.~~

~~(P) Standard 255, Method of Test Surface Burning Characteristics of Building Materials.~~

~~(Q) Standard 258, Research Test Method for Determining the Smoke Generation of Solid Materials.~~

~~(R) Standard 701, Method of Fire Tests for Flame Resistant Textiles and Films.~~

~~(S) Southern Building Code Congress International, Inc. Standard Building Code.~~

~~(T) Underwriter's Laboratories, Inc. Publication No. 181~~

APPENDIX D. FLAME-SPREAD AND SMOKE-PRODUCTION LIMITATIONS OF INTERIOR FINISHES IN AMBULATORY SURGICAL CENTERS [REVOKED]

		Flame-Spread Rating	Smoke-Production Rating
Walls & Ceilings	Exit ways, storage rooms, & areas of unusual fire hazard.	ASTM Standard E 84) 25 or less)	NFPA Standard 258
	All other areas.	ASTM Standard E 84) 75 or less)	450 or less*
Floors		ASTM Standard E 84) 75 or less)	

*Average of flaming and non-flaming values.

APPENDIX E. VENTILATION REQUIREMENTS FOR AREAS AFFECTING PATIENT CARE IN AMBULATORY SURGICAL CENTERS [REVOKED]

Area designation	Air Movement relationship to adjacent area[2]	Minimum air changes outside air per hour[3]	Minimum total air changes per hour[8]	Recirculated by means of room units[4]	All air exhausted directly outdoors[5]	Relative humidity[6]	Design temperature (degrees)[7]
Operating room[14]	Out	3	15	No	--	50-60	70-75
Delivery room[14]	Out	3	15	No	--	45-60	70-75
X-ray card. cath.and invas. proc.[15]	Out	3	15	No	--	45-60	70-75
Newborn nursery	--	1	6	No	--	30-60	75
Recovery room[14]	--	2	6	No	--	30-60	70
Isolation room[10]	In	--	6	No	Yes	---	70-75
Isolation alcove or ante room[10]	Out	--	10	No	Yes	---	---
Labor delivery rooms(LDR)	--	--	2	--	--	---	70-75
Patient corridor	--	--	2	--	--	---	---
Examination room	--	--	6	--	--	---	75
Medication room	--	--	4	--	--	---	---
Pharmacy	--	--	4	--	--	---	---
Treatment room[9]	--	--	6	--	--	---	75
Trauma room[9]	Out	3	15	No	--	45-60	70-75
X-ray rm.and noninvas. proc.[15]	--	--	6	--	--	---	75
Physical Rx							
Hydrotherapy	In	--	6	--	--	---	75
Treatment room	--	--	6	--	--	---	70-75
Soiled utility	In	--	10	No	Yes	---	---
Clean utility	--	--	4	--	--	---	---
Autopsy room	In	--	12	No	Yes	---	---
Dark room	In	--	10	No	Yes	---	---
Nonrefrigerated body-holding room[12]	In	--	10	Yes	Yes	---	70
Toilet room	In	--	10	Yes	Yes	---	---
Bedpan room	In	--	10	Yes	Yes	---	---
Bathroom	--	--	10	--	--	---	75
Janitors closet	In	--	10	No	Yes	---	---
Sterilizer equipment room[13]	In	--	10	--	Yes	---	---
ETO-sterilizer room[13]	In	--	10	No	Yes	--	75
Soiled linen and trash rooms	In	--	10	No	Yes	---	---
Laboratory							
General[16]	--	--	6	--	--	---	---
Nuclear[15]	In	--	6	No	Yes	---	---
Pathology	In	--	6	No	Yes	---	---
Cytology	In	--	6	No	Yes	---	---
Biochemistry[16]	Out	--	6	No	---	---	---
Histology	In	--	6	No	Yes	---	--
Microbiology[16]	In	--	6	No	Yes	--	---

Area designation	Minimum exhausted to adjacent area[2]	Design outside air per hour[3]	All air changes per hour[8]	by means of room units[4]	directly outdoors[5]	Relative humidity[6]	relationship temperature (degrees)[7]	changes total air	Air movement Recirculated	Minimum air
Serology	Out	--	6		No	--	--	---		
Glass washing	In	--	10		--	Yes	--	---		
Sterilizing	In	--	10		--	Yes	--	---		
Food preparation center[11]	--	--		10	No	--	--	---		
Ware washing	In	--	10		No	Yes	--	---		
Dietary day storage	In	--		2	--	--	--	---		
Laundry, general	--	--		10	--	Yes	--	---		
Soiled linen (sorting and storage)	In	--		10	No	Yes	--	---		
Clean linen	--	--	2		--	--	--	---		
Anesthesia gas storage[14]	--	--		8	--	Yes	--	---		
Central supply Soiled room	In	--	6		No	Yes	--	---		
Clean workroom & sterile storage	Out	--	4	No	--	(max) 70	75			

[1]This table covers ventilation for comfort, as well as for asepsis and odor control in areas of acute care hospitals that directly affect patient care. Areas where specific standards are not given shall be ventilated in accordance with ASHRAE STANDARD 62-1981, "Ventilation for Acceptable Indoor Air Quality Including Requirements for Outside Air." Specialized patient care areas including organ transplant units, specialty procedure rooms, etc., shall have additional provisions for air quality control as may be appropriate. OSHA standards and/or NIOSH criteria require special requirements for employee health and safety within health care facilities.

[2]Design of the ventilation system shall, insofar as possible, provide that air movement is from "clean to less clean" areas. However, continuous compliance may be impractical with full utilization of some forms of variable air volume and load shedding systems which may be used for energy conservation. Areas which do not require positive and continuous control are noted with "out" or "in" to indicate the required direction of air movement in relation to the space named (this designation was previously described as "positive" or "negative" pressure). Rate of air movement may, of course, be varied as needed within the limits required for positive control. Where indication of air movement direction is enclosed in parentheses, continuous directional control is required only when the tool is in use or where room use may otherwise compromise the intent of movement from clean to less clean. Air movement for rooms with dashes and non-patient areas may vary as necessary to satisfy the requirements. Additional adjustments may be needed when space is unused or unoccupied and air systems are shut down or reduced.

[3]To satisfy exhaust needs, replacement air from outside is necessary. Table III does not attempt to describe specific amounts of outside air to be supplied to individual spaces except for certain areas such as those listed. Distribution of the outside air, added to the system to balance required exhaust, shall be required by good engineering practice.

[4]Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No." Isolation and intensive care unit rooms may be ventilated by induction units in which only the primary air supplied from a central system passes through the reheat unit. Gravity type heating or cooling units such as radiators or convectors shall not be used in operating rooms or other special care areas.

[5]Air from areas with contamination and/or odor problems shall be exhausted to the outside and not recirculated to other areas. Note that individual circumstances may be required special consideration for air exhaust to outside, e.g., and intensive care unit in which patients with pulmonary are treated, and room for burn patients.

[6]The ranges listed are the minimum and maximum limits where control is specifically needed.

[7]Dual temperature indications (such as 70-75) are for an upper and lower variable range at which the room temperature must be controlled. A single figure indicates a heating or cooling capacity of a least the indicated temperature. This is usually applicable when patients may be undressed and require a warmer environment. Nothing in this document shall be construed as precluding the use of temperature lower than those noted when the patients comfort and medical conditions make lower temperatures desirable. Unoccupied areas such as storage, etc., shall temperatures appropriate for the function intended.

[8]Number of air changes may be reduced when the room is unoccupied if provisions are made to insure that the number of air changes indicated is re-established any time the space is being utilized. Adjustments shall include provisions so that the direction of air movement shall remain the same when the number of air changes is reduced. Areas not indicated as having continuous directional control may have ventilation systems shut down when space is unoccupied and ventilation is not otherwise needed.

[9]The term trauma room as used here is the operating room in the emergency department, or other trauma area that is used for emergency surgery. The first aid room and/or "emergency room" used for initial treatment of accident victims may be ventilated as noted for the "treatment room."

[10]The isolation rooms described in these standards are those that might be utilized in the average community hospital. The assumption is made that most isolation procedures will be for infectious patients and that the room should be suitable for normal private use when not needed for isolation. This compromise obviously does not provide for ideal isolation. The design should consider types and numbers of patients that might need this separation within the facility. When need is indicated by the program, it may be desirable to provide more complete control with a separate anteroom as an air lock to minimize potential for airborne particles for the patients' area reaching adjacent areas. Certain types of patients such as those with organ transplants, burns, etc., may require special consideration, including reverse isolation for which the air movement relationship to adjacent areas would be "out" rather than "in." Where these requirements are reflected in the anticipated patient load, ventilation shall be modified as necessary. Variable exhaust that allows maximum room space flexibility with reverse air flow direction would be useful only if appropriate adjustments can be assured for different types of isolation procedures.

[11]Food preparation centers shall have ventilation systems that have an excess of air supply for "out" air movements when hoods are not in operation. The number of air changes may be reduced or varied to any extent required for odor control when the space is not in use.

[12]A nonrefrigerated body-holding room would be applicable only for health care facilities in which autopsies are not performed on-site, or the space is used only for holding bodies for short periods prior to transferring.

[13]Specific OSHA regulations regarding ethylene oxide (EIO) use have been promulgated. 29 CRF 1910.1047 includes specific ventilator requirements including local exhaust of the EIO sterilizer area.

[14]National Institute of Occupational Safety and Health (NIOSH) Criteria Documents regarding Occupational Exposure to Waste Anesthetic Gases and Vapors, and Control of Occupational Exposure to Nitrous Oxide indicate a need for both local exhaust (scavenging) systems and general ventilation of the areas in which the respective gases are utilized.

[15]Large hospitals may have separate departments for diagnostic and therapeutic radiology and nuclear medicine. For specific information on radiation precautions and handling of nuclear materials, refer to appropriate publication of National Radiation Safety Council and Nuclear Regulatory Commission. Special requirements are imposed

[16]When required, appropriate hoods and exhaust devices for the removal of noxious gases shall be provided (see NAPA 99).

APPENDIX F. FILTER EFFICIENCIES FOR CENTRAL VENTILATION AND AIR CONDITIONING SYSTEMS IN OUTPATIENT FACILITIES [REVOKED]

Filter bed Area designation	Number filter beds	Filter efficiencies (%) Filter bed no. 1	Filter efficiencies (%) Filter bed no. 2
Critical areas*	2	25	90
All noncritical areas for patient care treatment, and/or diagnosis, and those areas providing direct or support services such as clean supplies, laboratories, sterile and clean processing, bulk storage, soiled holding areas, administrative.	1	25	--

Note: Additional roughing or prefilters should be considered to reduce maintenance required for main filters. Ratings shall be based on ASHRAE 52-76.

*Operating rooms.

APPENDIX G. STATION OUTLETS FOR OXYGEN AND VACUUM (SUCTION) SYSTEMS [REVOKED]

Location	Oxygen	Vacuum
General Operating Room	B	B
Recovery Room for Surgical Patients	A	A

A = One outlet for each bed.
B = Two outlets.

[OAR Docket #19-671; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 625. CERTIFICATE OF NEED STANDARDS FOR ICF/~~MR~~IID

[OAR Docket #19-672]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
310:625-1-1. Purpose [AMENDED]
310:625-1-2. Service area [AMENDED]
310:625-1-3. Burden of proof [AMENDED]
310:625-1-4. Standards [AMENDED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 25 O.S. § 40; 63 O.S. § 1/851.2 (A) (7).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
This action amends numerous sections within this chapter. The term "Mentally Retarded" is outdated and may be considered disrespectful. This change replaces the aforementioned term with "Individuals with Intellectual Disabilities". Pursuant to Title 25 of the Oklahoma Statutes (O.S.) at Section 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

The action removes obsolete references to state schools operated by the State Department of Human Services.

CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

310:625-1-1. Purpose

This Chapter shall apply to Certificate of Need applications reviewed by the Department for proposed Intermediate Care Facility/~~Mentally Retarded~~Individuals with Intellectual Disabilities~~(ICF/NR)~~(ICF/IID) beds and implements part of the Long-term Care Certificate of Need Act. This Chapter shall not apply to ~~ICF/MR~~ ICF/IID 16s and smaller facilities.

310:625-1-2. Service area

For review purposes under these standards, the service area for an ~~ICF/MR~~ ICF/IID shall be the ~~Mentally Retarded School Service Region~~service region or area, as designated by the State Department of Human Services, in which it is located or proposed for location. In the event an application for Certificate of Need is considered for a specialized ~~ICF/MR~~ ICF/IID facility for which only one or two facilities may be needed, or where no service area is designated, in the State, then the Department may treat the entire State as the service area.

310:625-1-3. Burden of proof

It shall be incumbent on each applicant to clearly demonstrate an unmet need for additional ~~ICF/MR~~ ICF/IID beds in the applicable service area and to demonstrate conformance with all standards specified herein.

310:625-1-4. Standards

(a) No new ~~ICF/MR~~ICF/IID beds, except ~~ICF/MR~~ ICF/IID 16s and smaller, shall be approved in the service area unless the total number of ~~ICF/MR~~ ICF/IID beds in the service area falls below the following standard: 84 ~~ICF/MR~~ ICF/IID beds per 100,000 general population.

(b) An application for ~~ICF/MR~~ ICF/IID beds shall not be approved unless the applicant demonstrates familiarity with and understanding of certification standards for an ~~ICF/MR~~ ICF/IID, specified in 42 CFR Section ~~442. 400~~442.400, relating to Standards for Payment to Nursing Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities.

(c) The identity of the licensed administrator of the existing or proposed facility must be provided by the applicant as a prerequisite to issuance of a Certificate of Need.

(d) No additional ~~ICF/MR~~ ICF/IID beds, whether proposed through construction or conversion of existing space, shall be approved for any existing ~~ICF/MR~~ ICF/IID unless it has maintained an occupancy rate of at least 95%, based upon a calculation of occupancy reflected in the monthly average daily census reports of the Department of Human Services, or the Department, for the most recent six month period for which official data is available when the application is filed.

(e) Any ~~ICF/MR~~ ICF/IID beds approved, but not yet in place in the service area, shall be included in the evaluation for determining bed need specified in subsection (a).

(f) Any existing ~~ICF/MR~~ ICF/IID which proposes an expansion of beds by conversion or construction and which has a record of questionable quality of care, as demonstrated through complaint investigation records, or other means, may be denied a Certificate of Need despite the conformity of the proposal to other standards delineated herein.

(g) ~~In determining the bed need in subsection (a), the beds at the three state schools are hereby determined to be the number of beds necessary to have a 90% occupancy, based upon a calculation of occupancy reflected in the monthly average daily census reports of the Department of Human Services for the most recent six month period for which official data is available when the application is filed.~~

~~(h)~~ The Department shall consider the relationship of a Certificate of Need application to any plan adopted by the Department of Human Services concerning the distribution and allocation of services for ~~mentally retarded or developmentally disabled persons~~ individuals with intellectual or developmental disabilities.

[OAR Docket #19-672; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED NURSING FACILITY BEDS

[OAR Docket #19-673]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
310:630-1-1. Purpose [AMENDED]
310:630-1-3. Standards [AMENDED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 25 O.S. § 40; 63 O.S. § 1-851.2 (A) (7).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The term "Mentally Retarded" is outdated and may be considered disrespectful. This action replaces the aforementioned term with "Individuals with Intellectual Disabilities". Pursuant to Title 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.
CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

310:630-1-1. Purpose

This Chapter shall apply to Certificate of Need applications reviewed by the Department for proposed licensed nursing facility (LNF) beds. This Chapter establishes review criteria and standards as authorized pursuant to Title 63 O.S. Section 1-851.2(A)(7).

(1) The Department shall use these standards in considering an application's conformity to the Long Term Care Certificate of Need Act.

(2) Each applicant who proposes licensed nursing facility beds has the burden to clearly demonstrate conformity to these standards.

(3) For purposes of this Chapter, licensed nursing facility (LNF) beds shall include all facilities defined under the Nursing Home Care Act, 63 O.S. Section 1-1901 et seq., excluding any facility certified for service to ~~the mentally retarded~~individuals with intellectual disabilities.

310:630-1-3. Standards

(a) The applicant shall demonstrate that existing licensed nursing facility beds are not and will not be adequate in the service area described in 310:630-1-2, based on the need of the population.

(1) The applicant shall demonstrate that there are persons who need services in the area but are unable to obtain those services due to the inadequacy of existing LNF facilities in the area.

(2) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over statewide. The applicant must show that the proposed new beds likely will not cause the statewide ratio to exceed 179 beds per 1000 persons age 75 and over, and that the project is consistent with the achievement of an optimal target ratio of 152 beds per 1000 persons age 75 and over.

(3) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over in the service area. No application shall cause an excessive increase in the bed to population ratio of a service area. The determination of whether or not an increase is excessive shall be based on the percentage of increase a project will cause in an area's bed to population ratio, and on a comparison of the area's bed to population ratio against the statewide ratio.

(4) The most recent population data published at the time the application is filed shall be used. The source of population projections for current and future years shall be based on year 2000 census data as published by the Oklahoma Department of Commerce.

(5) If the applicant proposes a special service area under 310:630-1-2, then the applicant shall demonstrate that the target population will have access to the proposed services through public or private transportation.

(b) The applicant shall demonstrate that alternative or substitute services are not and will not be available or are and will be inadequate to meet the needs of the population.

(1) An overall mean occupancy rate of 85% should be maintained in LNF beds in the Service Area described in OAC 310:630-1-2.

(A) This mean shall be based upon data from all similarly-licensed facilities in the Service Area using monthly reports filed with the Department of Health, taking into consideration the following:

(i) any specialized facility for ~~mentally retarded persons~~individuals with intellectual disabilities or intermediate care facility for ~~mentally retarded persons~~individuals with intellectual disabilities in the area shall be excluded;

(ii) in the case of a nursing facility application, any hospital-based skilled nursing unit shown to serve a different health service need shall be excluded;

(iii) in the case of a hospital-based skilled nursing unit application, any nursing facility shown to serve a different health service need shall be excluded;

(iv) in the case of a facility demonstrating a special service area under OAC 310:630-1-2(b), each facility not shown to be adequate or appropriate to meet the needs of the facility's special population shall be excluded.

(B) The mean shall be calculated using data for the most recent six month period for which reports are published by the Department of Health, as of the first day of the month during which an application is initially filed.

(i) Beds reserved for residents who were temporarily absent from facilities for hospitalization or other therapeutic purposes shall be considered to have been occupied.

(ii) The area bed capacity used to calculate the occupancy rate shall be reduced by the number of beds that are not available because rooms licensed for multiple occupants have been reserved for single occupants throughout the six-month period.

(C) In determining the service area's conformity to the occupancy goal specified in this subsection, the Department shall investigate the causes for low-occupancy operation of other facilities in the service area. The Department shall exclude such low-occupancy facility from the service area calculations if the facility has been in operation continuously under the current licensee for twenty-four (24) or more months and:

(i) The facility's state license or federal certification during the sixty (60) months preceding the filing of the application has been revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal;

(ii) The facility has a history of noncompliance as defined in 63:1-851.1(6); or

(iii) The facility has not complied with all lawful orders of suspension, temporary management, or administrative penalty issued by the Department, another state agency, or by the federal Health Care Financing Administration;

(iv) The facility's owner, operator, manager, or medical director has been convicted of a criminal offense related to the operation or management of a long-term care facility; or

(v) The facility has been assessed an administrative penalty above the level of deficiency with one or more of the following unfavorable factors:

(I) The administrative penalty included a citation of immediate jeopardy or actual harm to a resident;

(II) The circumstance cited in connection with a civil money penalty or other administrative penalty resulted in the death of a resident; or

(III) Multiple civil money penalties, denials of payment, or other administrative penalty have been assessed based on findings of substandard quality of care, actual harm, or potential for more than minimal harm, at the facility within the preceding 60 months.

(2) The applicant shall demonstrate that the proposed beds are needed in addition to any beds previously approved under the State Certificate of Need laws but not yet in operation in the service area.

(3) The applicant's demonstration shall include consideration of the adequacy of such alternative services as residential care facilities, Eldercare, home health care, hospice, assisted living and adult day care.

(c) The applicant shall demonstrate adequate financial resources for the new or expanded long-term care services and for the continued operation thereof.

(1) Reimbursement shall be structured to realistically provide for care and services to persons living in the service area.

(2) The proposed charges shall be in line with the prevailing rate of similar institutions and services within the health service area.

(3) The projected utilization rates shall be sufficient to maintain cost-effectiveness.

(4) The projected cash flow shall give the proposed project financial viability within three years.

(5) The relationship of the institution's assets to liabilities shall not be increased by the proposed project to the point of threatening the financial viability of the institution.

(6) The applicant shall supply a cost/benefit analysis to justify the cost-effectiveness of the proposed project.

(d) The applicant shall demonstrate that sufficient personnel will be available to properly staff and operate the proposed new or expanded long-term care service.

(1) A proposal to provide new or expanded long-term care service must provide assurances that the appropriate numbers and types of staff will be available to comply with licensure requirements.

(2) Professional and paraprofessional staffing of new or expanded long-term care services must not compromise the staffing of existing long-term care services.

(3) The applicant shall disclose all current and prior experience in the operation of health care facilities, giving names of facilities, locations, and dates. If the applicant has less than sixty (60) months experience in health care facility operations immediately preceding the filing of the application, then the applicant shall:

(i) Provide a plan which details how experienced and competent staffing and leadership, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, will be placed in charge of facility operations; and

(ii) Agree to advise the OSDH, prior to any change in the staffing and leadership during the first six months of operation of the new or expanded facility.

[OAR Docket #19-673; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 661. HOSPICE

[OAR Docket #19-674]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Administration
310:661-3-5. Continuing education [NEW]
310:661-3-5.1. Number of hours required [NEW]
310:661-3-5.2. Acceptable continuing education [NEW]
310:661-3-5.3. Documentation of attendance [NEW]
310:661-3-5.4. Penalty for failure to fulfill continuing education [NEW]

AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 63 O.S. § 1-862.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019

COMMENT PERIOD:
February 15, 2019 through March 21, 2019

PUBLIC HEARING:
March 19, 2019

ADOPTION:
March 19, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 13, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
These changes implement the provisions of House Bill 1438 (2015) creating Section 1-862 in Title 63 of the Oklahoma Statutes, relating to continuing education of hospice program administrators. The amendments define acceptable curriculum and instructors for meeting the education requirement. The proposal establishes documentation requirement of educational training and penalty for violation of the proposal. The effect of the Rule change will result in industry trained hospice administrators that are equipped to manage a hospice entity and oversee all components of patient care.

CONTACT PERSON:
Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. ADMINISTRATION

310:661-3-5. Continuing education

The section implements the provisions of Title 63 O.S. 1-862 concerning hospice administrator continuing education.

310:661-3-5.1. Number of hours required

(a) All hospice administrators operating a hospice program in this state shall be required to complete eight (8) hours of continuing education each calendar year.

(b) Hours of continuing education may be completed in person or online.

(c) Membership in a statewide organization relating to hospice care shall be considered as completion of one (1) hour of ethics credit each year.

310:661-3-5.2. Acceptable continuing education

(a) Continuing education curriculum content is acceptable when it includes at least one of the following components:

(1) Administrative skills, duties, and responsibilities;

(2) Administrative procedures and strategic planning;

(3) Community relations and public information;

(4) Fiscal and information data management;

(5) Human relations;

(6) Ethics; or

(7) State and federal statutes and rules applicable to Hospice service delivery.

(b) Continuing education hours may be offered through a graduate or undergraduate course, seminar, workshop, conference, or professional association meeting for the purpose of enhancing professional competency. This excludes independent reading and informal meetings that are informational in nature and are offered as a public service and not for the offering of continuing education.

(c) An acceptable instructor or entity offering continuing education courses shall have:

(1) Experience in hospice administration; or

(2) Expertise in teaching and instructional methods suitable to the subject presented; or

(3) Academic qualifications and experience for the subject.

310:661-3-5.3. Documentation of attendance

(a) A hospice administrator shall maintain in their personal records verification of course attendance, completion, or membership documents. Acceptable documents include the following:

(1) A continuing education validation form furnished by the presenter;

(2) A certificate or letter of attendance or completion with an agenda or content outline; or

(3) An official college transcript showing courses completed with credit issued or audit credit.

(b) The presenting organization must be identified in the verification documents through documentation identifying the sponsoring entity, the name of the program, location, dates, subject taught, total number of hours, participant's name and presenter's name and credentials.

(c) Presentation of fraudulent continuing education documentation shall be a violation of this Chapter and applicable to the hospice license.

310:661-3-5.4. Penalty for failure to fulfill continuing education

Failure to meet the continuing education requirements is a violation of Title 63, Section 1-862 and this Chapter and therefore, subject to a written notice of violation.

[OAR Docket #19-674; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

[OAR Docket #19-675]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Resident Assessments
310:663-5-3. Description of resident assessment form [AMENDED]
AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 25 O.S. § 40; 63 O.S. 1-890.3(A).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 19, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
310:663-5-3 - The current Rule uses the term"Mental Retardation". This term is outdated and may be considered disrespectful. This action replaces the aforementioned term with "Intellectual Disabilities". Pursuant to Title 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. In order to

promote consistency, it is necessary to amend all chapters that contain this terminology, even if those chapters do not equate persons with their condition. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

CONTACT PERSON:

Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 5. RESIDENT ASSESSMENTS

310:663-5-3. Description of resident assessment form

(a) The admission assessment form shall include but not be limited to the following:

(1) resident's identification;

(2) disease diagnosis/infections;

(3) mental health history, and ~~mental retardation~~intellectual disability or developmental disability;

(4) physical functioning which includes the numbers of persons needed to assist with activities of daily living;

(5) incontinence;

(6) medications;

(7) special treatment and procedures;

(8) cognitive function; and

(9) signatures and dates.

(b) The comprehensive assessment includes the following information:

(1) physical functional status;

(2) mental functional status;

(3) customary routine;

(4) disease diagnosis;

(5) oral/nutritional status;

(6) medications;

(7) devices and restraints;

(8) special treatments;

(9) skin condition;

(10) psychosocial status;

(11) sensory and physical impairments; and

(12) medically defined conditions and prior medical history.

[OAR Docket #19-675; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #19-676]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 667. Hospital Standards [AMENDED]

AUTHORITY:

Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 63 O.S. § 1-705; 63 O.S. § 1-707; 25 O.S. § 40; 63 O.S. § 1-533 (A), et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 28, 2019

COMMENT PERIOD:

February 15, 2019 through March 21, 2019

PUBLIC HEARING:

March 19, 2019

ADOPTION:

March 19, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

April 1, 2019

LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR1022

FINAL ADOPTION:

May 28, 2019

EFFECTIVE:

September 13, 2019

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

This action will amend several sections of this chapter with the most current national guidelines and revoke outdated references and guidelines accordingly. This revision also corrects the stroke certification classifications and addresses other scrivener and/or typographical errors as detailed below.

An amendment is provided to update form numbers and correct a typographical errors at 310:667-1-3.e.2-4, 310:667-47-1, and 310:667-59-3(f). Also scrivener's error omitted the update of language in section 310:667-59-3(f). This amendment provided the correct name of the stroke center classifications.

At 310:667-41-1 an incorporation by reference is inserted to address the latest standards used by architects and the Centers for Medicare and Medicaid Services (CMS). This update to section 310:667-41-1 includes the incorporation by reference to update the FGI 2018 Guidelines for Design and Construction of Outpatient Facilities, 2018 Edition, which replaces the reference to the FGI 2014 edition. Also incorporated by reference are the National Bureau of Standards Fire Safety Evaluation System to the National Fire Protection Association's NFPA 101A Guide on Alternative Approaches to Life Safety, 2010 Edition. The revision explicitly identifies the applicable portions of the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition that applies to design and construction requirements. An incorporation by reference is inserted to address a secondary incorporation by reference that was present in the NFPA99, 2012 Edition. The heating and ventilating systems standards at the American Society of Heating, Refrigerating and Air-Conditioning Engineers, ASHRAE 170, 2008 Edition, are referenced by NFPA99, 2012 Edition. This revision aids architects so that they can design based on the requirements applied by the CMS. By updating the references to NFPA 99 and ASHRAE we avoid facilities designed to meet state requirements but that do not meet CMS requirements.

The above incorporations by references require previous sections of the rules to be amended or removed. Amendments to provide accurate reference to the revised rules are provided at 310:667-56-1, 310:667-56-2, and 310:667-57-2. The following revocations are also required for clarity: Subchapters 310:67-43, 45, 49, 51, 53, and 55; Subchapter 47 sections 5-8; and Appendices A, B, C, D, and E.

CONTACT PERSON:

Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA STATE DEPARTMENT OF HEALTH, 1000 N.E. 10TH STREET, OKLAHOMA CITY, OK 73117-1207 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

This action will amend several sections of this chapter with the most current national guidelines and revoke outdated references and guidelines accordingly. This revision also corrects the stroke certification classifications and addresses other scrivener and/or typographical errors as detailed below.

An amendment is provided to update form numbers and correct a typographical errors at 310:667-1-3.e.2-4, 310:667-47-1, and 310:667-59-3(f). Also scrivener's error omitted the update of language in section 310:667-59-3(f). This amendment provided the correct name of the stroke center classifications.

At 310:667-41-1 an incorporation by reference is inserted to address the latest standards used by architects and the Centers for Medicare and Medicaid Services (CMS). This update to section 310:667-41-1 includes the incorporation by reference to update the FGI 2018 Guidelines for Design and Construction of Outpatient Facilities, 2018 Edition, which replaces the reference to the FGI 2014 edition. Also incorporated by reference are the National Bureau of Standards Fire Safety Evaluation System to the National Fire Protection Association's NFPA 101A Guide on Alternative Approaches to Life Safety, 2010 Edition. The revision explicitly identifies the applicable portions of the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition that applies to design and construction requirements. An incorporation by reference is inserted to address a secondary incorporation by reference that was present in the NFPA99, 2012 Edition. The heating and ventilating systems standards at the American Society of Heating, Refrigerating and Air-Conditioning Engineers, ASHRAE 170, 2008 Edition, are referenced by NFPA99, 2012 Edition. This revision aids architects so that they can design based on the requirements applied by the CMS. By updating the references to NFPA 99 and ASHRAE we avoid facilities designed to meet state requirements but that do not meet CMS requirements.

The above incorporations by references require previous sections of the rules to be amended or removed. Amendments to provide accurate reference to the revised rules are provided at 310:667-56-1, 310:667-56-2, and 310:667-57-2. The following revocations are also required for clarity: Subchapters 310:67-43, 45, 49, 51, 53, and 55; Subchapter 47 sections 5-8; and Appendices A, B, C, D, and E.

The full text of the rule may be obtained by contacting the Emergency Medical Services division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-4027, e-mail ESystems@health.ok.gov.

[OAR Docket #19-676; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 670. ~~JAIL~~CITY AND COUNTY DETENTION FACILITY STANDARDS

[OAR Docket #19-677]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
310:670-1-1. Purpose [AMENDED]
310:670-1-2. Definitions [AMENDED]
310:670-1-4. Holding facilities exempt [NEW]
310:670-1-5. Policies and procedures [NEW]
Subchapter 3. Standards for Lockup Facilities
310:670-3-1. Basic standards [AMENDED]
Subchapter 5. Standards for ~~Jail~~Detention Facilities~~/Detention Center~~
310:670-5-1. Admission, release and records [AMENDED]
310:670-5-2. Security and control [AMENDED]
310:670-5-3. Supervision of ~~prisoners~~ inmates [AMENDED]
310:670-5-4. ~~Prisoner~~ Inmate rules,~~and~~ discipline and grievances [AMENDED]
310:670-5-5. Classification and segregation [AMENDED]
310:670-5-6. Safety, sanitary and hygiene standards [AMENDED]
310:670-5-7. Food services and dietary requirements [AMENDED]
310:670-5-8. Medical care and health services [AMENDED]
310:670-5-9. Mail and visitation [AMENDED]
310:670-5-10. Training and staff development [AMENDED]
310:670-5-11. Physical plant [AMENDED]
Subchapter 7. Standards for ~~Jails~~Detention Facilities Holding Juveniles
310:670-7-1. Standards for ~~jails~~detention facilities holding juvenile offenders [AMENDED]
310:670-7-2. Certification of detention facilities holding juvenile offenders [NEW]
310:670-7-3. Recording and reporting the use of detention facilities to hold juvenile offenders [NEW]

AUTHORITY:

Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 74 O.S. 192

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 28, 2019

COMMENT PERIOD:

March 1, 2019 through April 1, 2019

PUBLIC HEARING:

April 1, 2019

ADOPTION:

April 1, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

April 1, 2019

LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:

May 28, 2019

EFFECTIVE:

September 13, 2019

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The laws of the State of Oklahoma require the Oklahoma State Department of Health to develop standards for jail operation and monitor compliance with those standards. Title 74 O.S § 192, requires the Department to inspect all city and county jails at least once a year and to write standards for their operation. The standards are to address the following: admission and release procedures; security measures; sanitary conditions; diet; clothing; living areas; jail staff training, safety and segregation of women, the infirm, and minors; medical care; 24-hour supervision; emergency exits; inmate education of facility rules; and holding facilities for the incarceration of persons no longer than twelve hours,

The Standards were last revised in 2005, since then there have been changes in technology, jail design, health care administration, new state and federal law, and court decisions.

The Department along with the Oklahoma Sheriffs' Association, Office of Juvenile Affairs and Oklahoma Municipal Assurance Group began meeting in February of 2016 to review what updates might be needed. Meetings began in April 2016 and continued 18 months with efforts aimed at: examining the requirements in other states; collecting the experience and suggestions of administrators and other stakeholders. The work group included large, medium and small city and county facilities and their administrators, detention facility health care providers, and the Office of Juvenile Affairs.

Subchapter 1. General Provisions. Terminology is updated throughout the Chapter to reflect detention facilities and Officers. Statute references are inserted and or updated. Medical "reception information" vs. "screening" is aligned with the law at Title 57 O.S. § 4.1(3). Gender segregation requirements are clarified to incorporate non-sustained contact. Building and fire safety standards reflect standards as adopted by the State Fire Marshall at Title 74 O.S. § 317.

The definitions are revised to address contraband, direct contact, direct supervision, emergency care, holding facilities, living areas, non-secure areas, pat-downs, sight checks, and sight, sound and sustained contact.

The rules are updated to reflect a change in the law at 74 O.S. § 192(C), which increased the number of inmates allowed to be supervised in city and county facilities. The law changed from 20 to 40 inmates that could be supervised with one detention officer where there is direct observation or closed circuit monitoring, an intercom system to call back-up emergency support, trained staff, and staff available to perform sensitive functions. If there are greater than 40 and less than 75 inmates, then there must be both a detention officer and at least one CLEET certified officer available, where the other listed criteria are met. The rules are amended to conform with this law. Where this Chapter specifies that the facility shall develop a policy and procedure, the standards are provided for the substance of those policies.

Subchapter 3. Standards for Lockup Facilities. The gender segregation requirements are clarified to incorporate non-sustained contact; medical reception records aligned to law; staffing language is revised as discussed previously in this notice; and references to compliance with the fire safety code are replaced with the standards as required by the State Fire Marshal; facility smoking policies must comply with the law at Title 21 O.S. § 1247.

Subchapter 5. Standards for Jail Facilities/Detention Center. The guidance for bodily searches is clarified to include search on entry and discretionary bodily search on entering the general population. Intake screening is clarified to address a medical questionnaire not a medical screening. The duplication in records requirements was removed. Notification to the Department of an inmate death is changed to the next business day, notification to the Department of an escape with injury was removed while notice of an escape with serious injury remains. Reference to the laws authorization to charge an inmate a ten cent copy charge is inserted from Title 19 O.S. § 531(B).

The updates specify requirements for a grievance policy to align with 57 O.S. § 566.3, 42 U.S. Code § 1997e, and 28 CFR Part 40A. The grievance policy covers (1) Procedures whereby any inmate may appeal and have resolved grievances; (2) The types of complaints covered and excluded consistent with applicable state and federal law and rule, and court decisions, to include policies and conditions within the jurisdiction of the facility that affect the inmate personally, actions by employees and inmates, and incidents occurring within the facility that affect the inmate personally; (3) A grievance form or instructions for registering a grievance; (4) Resolution of the grievance at the lowest appropriate staff level; (5) Appeal to the next level of review; (6) Written reasons for denial of grievance at each level of review which acts on the grievance; (7) Provision for response within a reasonable time limit; (8) Provision for resolving questions of jurisdiction within the facility; and (9) Procedures to control the submission of an excessive number of grievances.

Language is addressed or revised to address housing of inmates with mixed gender identification such that housing is administered in a manner to maximize inmate safety; language is revised to clarify that juveniles are to be housed without sustained sight and sound contact, while inadvertent contact is permitted. The revisions address requested clarifications in short term juvenile housing; the need for discretion in separation of inmates who appear to have a significant medical or psychiatric problems; ambiguity in requirements to comply with external sanitation codes; supervision of inmates when cleaning; withholding of bedding where indicated by circumstances defined in the facility's policy; issuance of blankets consistent with interior weather conditions; clothing allowance; garbage can specifications; special diet orders require evidence of medical condition; menu review; and documentation required on refusal to eat, and food worker illnesses.

Language is added or revised to address observation requirements where screening indicates a significant medical or psychiatric problem, or suicide risk; the facility should observe inmates consistent with their policy and the identified need until the appropriate medical evaluation has been completed. Such inmates may be assigned to housing consistent with the evaluation. Medication storage is addressed to allow they be from a cell where inmate safety is threatened or abuse of the medication is documented. Prepackaged over-the-counter medications are defined and are those medications provided in single-dose packaging. Language is added to clarify that , where indicated, when an inmate is held greater than 48 hours a medical examination will be scheduled.

The standards for bulk medication are clarified and provide for dispensing from bulk medications with a doctors order, pre-packaged single dose drugs may be sold in the commissary, and distribution of medications at discharge along with guidance on continuity of medical care on transfer or discharge. Applicable law is cited to address that inmates are liable for the cost of medications and incarceration [19 O.S. § 531(B) and 22 O.S. § 979a].

Provisions are added to address where court orders restrict mail delivery. Standards are proposed to address the acceptance of inmate funds consistent with facility policy, and visitation language is revised to rely on facility policy and to allow reasonable policies on visits by clergy. Physical plant plan review requirements are revised to incorporate the plan review conducted by the State Fire Marshal under 74 O.S. § 317.

The staff training and testing requirements are revised consistent with changes in the law at 74 O.S. § 192(A)(7) which now allow the Department to approve training and testing programs. Requirements for who must be trained, at what level, and by when are clarified. A new employee whose primary responsibilities include supervision of inmates shall receive orientation and training prior to job assignment by the facility. An employee who has received orientation and training may be assigned to inmate supervision prior to passing the Detention Officer examination.

Subchapter 7. Standards for Jails Holding Juveniles. The authorization for a facility to hold juveniles comes from appropriate judicial or juvenile bureau authority. The language clarifies this and the short-term holding authority for a detention facility. The role of certification of detention facilities holding juvenile offenders by the Office of Juvenile Affairs is clarified. As are requirements for recording and reporting the use of detention facilities to hold juvenile offenders.

CONTACT PERSON:

Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

310:670-1-1. Purpose

The rules in this Chapter provide procedures for inspecting all city and county ~~holding~~ detention facilities, city or county lockup facilities, and ~~jails~~city or county detention facilities holding juveniles, as authorized by 74 O.S., Section 192.

310:670-1-2. Definitions

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

"ACA" means American Correctional Association.

"Available" means that the subject individual is either on site or on the premises.

"Bodily search" means any invasive examination by hand of an ~~prisoner's~~inmate's person or clothing. Bodily searches do not include "pat-downs."

"Central control" means the central point within the facility where security activities are monitored and controlled.

"Contraband" means anything not authorized to be in an inmate's possession.

"Dayroom" means space for activities that is situated immediately adjacent to the ~~prisoners'~~inmates' sleeping area and separated from the sleeping area by a wall.

"Department" means Oklahoma State Department of Health.

"Detention facility" means a facility that may hold a person for an indefinite period of time.

~~**"Trained jailer"** or **"jailer"**~~**"Detention Officer"** means a person whose training, education and/or experience specifically qualifies him or her to perform the duties indicated in the job description and the jail standards, or a person who holds a certification accorded pursuant to 70 O.S. Section 3311. The individual performing the duties must be trained in appropriate laws, codes, standards, policies and procedures.

"Direct contact with inmates" means contact between Detention Officers and inmates in inmate living areas.

"Direct supervision" means the Detention Officer is in direct contact with inmates and is in a position to constantly monitor behaviors and interact with inmates.

"Emergency care" means *medical or surgical care necessary to treat the sudden onset of a potentially life-or limb-threatening condition or symptom* [57 O.S. § 38.3(A)(1)].

"Facility administrator" means sheriff, police chief, city manager, private contractor or a designee thereof charged with maintaining and operating a ~~holding facility,~~ lockup facility, or ~~jail~~detention facility.

"Grievance" means a circumstance or action considered unjust.

"Holding facility" means a facility that shall hold ~~a person~~*persons under arrest who are charged with a crime* no longer than twelve (12) hours [74 O.S. § 192(B)]. ~~A holding facility is not required to meet the standards for jails, so long as a trained employee of the responsible county, city or town is available to render aid to, or release any confined person in the event aid or release is required because of a health or life endangering emergency.~~

"Hot meal" means a measure of food served and eaten at one sitting prepared in accordance with ~~OAC 310:256~~ and served at a palatable temperature range of 110° - 120° F. (43.3°-48.8° C.).

"Indigent ~~prisoner~~inmate" means ~~a prisoner~~ an inmate who has a total receipt of or a balance of less than $15.00 from the first day through the last of the preceding month.

"Inmate" means any individual, whether in pretrial, sentenced or un-sentenced status who is confined in a detention facility.

~~**"Jail facility"** means a facility that may hold a person for an indefinite period of time.~~

"Juvenile" means a person who is subject solely to the jurisdiction of a juvenile court or who is subject to the provisions of ~~10 O.S. Sections 7306-2.5~~Title 10A O.S. § 2-5-205 or ~~7306-2.6~~10A O.S. § 2-5-206 (relating to classification as a youthful offender as defined at 10A O.S. § 2-5-202).

"Last locked/secure door" means the last secure barrier between staff and the ~~prisoner~~ inmate.

"Life endangering situations" means a suicide attempt, or obvious serious injury or illness, which in the evaluation of the staff requires an immediate response.

"Life threatening" means a situation in which life saving measures are taken.

"Living ~~quarters~~area" means ~~beyond the last locked/secure door~~ those areas of a facility utilized for the day-to-day housing and activities of inmates. These areas do not include reception and release areas and special use cells such as sobering, safety, and holding or staging cells normally located in receiving areas.

"Lockup facility" means a facility that may hold a person no longer than ten (10) days. It is usually operated by a town or city for the temporary detention of persons awaiting arraignment. Persons who need to be detained longer than ten (10) days shall be transferred to a ~~jail~~detention facility.

"New construction" means a facility with final plans approved after January 1, 1992.

"Non-secure areas" means those areas where a youth or juvenile is in the custody of law enforcement and may not be able to leave or depart from the presence of law enforcement, yet the youth or juvenile is not detained in a facility which limits movement.

"On site" means a ~~trained jailer or jailer~~Detention Officer being physically present within the ~~jail~~detention facility.

"On the premises" means a~~trained jailer or jailer~~Detention Officer being physically present within the structure ~~housing or~~ incorporating the ~~jail~~detention facility, or within a building or structure sharing the same realty or located on realty that is contiguous to the realty upon which the structure ~~housing or~~ incorporating the ~~jail~~detention facility is located, provided that such remote building or structure is not located farther than 500 feet from the ~~jail~~ detention facility.

"Pat-down" means a noninvasive search of ~~a prisoner~~ an inmate by hand performed by lightly skimming the exterior surface of the ~~prisoner's~~ clothing covering the legs and torso. ~~A pat-down of a prisoner by facility staff of the opposite gender may be conducted by using the back or dorsal surface of the hand.~~

"Physician or other licensed medical personnel" means a psychiatrist, medical doctor, osteopathic physician, physician's assistant, registered nurse, licensed practical nurse, emergency medical technician ~~(~~at the paramedic level~~)~~ or clinical nurse specialist [57 O.S. § 4.1(3)].

~~**"Prisoner"** means any individual, whether in pretrial, sentenced or unsentenced status who is confined in a jail facility.~~

"Sensitive functions and procedures" means any bodily search or the ~~direct~~visual supervision of any activity requiring ~~or involving a prisoner~~ an inmate to partially or fully disrobe.

"Sight check" means when a Detention Officer physically observes an inmate.

"Sight contact" means clear visibility within close proximity.

"Sound contact" means direct oral communication.

"Substantial remodeling" means the cost to repair/replace is at least fifty (50) percent of the cost to replace the facility.

"Sustained contact" means sight or sound contact that is not brief and inadvertent.

310:670-1-4. Holding facilities exempt

Pursuant to Title 74 O.S. § 192(B), a holding facility is not required to meet the standards for detention facilities, *as long as no person is held therein for a period longer than twelve (12) hours and as long as an employee of the county, city, or*

town is available to render aid to or to release any person so confined in the event aid or release is required because of a health or life-endangering emergency.

310:670-1-5. Policies and procedures

Where this Chapter specifies that the facility shall develop a policy and procedure, the following standards shall apply.

(1) A policy may include a procedure. A procedure may represent policy.

(2) Policies and/or procedures developed based on requirements in this Chapter shall identify the following:

(A) The rule or law addressed by the policy and procedure;

(B) The position(s) or personnel responsible for implementation and oversight of the policy and procedure;

(C) The actions to be taken or procedures to be followed by facility personnel. This is the who, what, where, and when of the procedure;

(D) The position(s) or personnel responsible for reviewing the policy and procedure;

(E) A schedule for reviewing the policy that identifies the frequency at which the policy and procedure will be reviewed; and

(F) A signature page to capture the signature and date that the responsible official adopted the policy and/or procedure and the dates that review of the policy and/or procedure were completed.

SUBCHAPTER 3. STANDARDS FOR LOCKUP FACILITIES

310:670-3-1. Basic standards

The facility administrator shall develop and implement written policies and procedures for the operation of a lockup facility which shall include and address at a minimum, the following:

(1) Arrest and commitment papers shall be verified.

(2) ~~A prisoner~~An inmate shall be searched during admission.

(3) ~~A prisoner's~~An inmate's property shall be inventoried and property shall be stored in a secure location.

(4) Medical ~~screening~~reception information shall be ~~performed on all prisoners and documented~~recorded in the inmate file and shall include, at a minimum, the following information:

(A) ~~Communicable diseases (i.e. HIV/STD, HEPATITIS, TB)~~ Current illnesses and health problems;

(B) Behavioral observation, including state of consciousness and mental status, history of ~~Alcohol~~ alcohol~~and~~ or drug abuse and treatment;

(C) ~~Allergies~~ Body deformities and trauma markings such as bruises, lesions, jaundice, and ease of body movement;

(D) ~~Injuries~~Condition of skin and visible body orifices, including infestations;

(E) ~~Illnesses~~ Medications taken and any special health requirements;

(F) ~~Medication~~ Whether the inmate is thinking about suicide or has recently attempted suicide; and

(G) ~~Suicide risks or attempts;~~ Disposition or referral of the inmate to qualified medical personnel on an emergency basis [57 O.S. § 4.1(3)].

(5) A first aid kit shall be available at locations designated by the facility administrator.

(6) Two (2) completed, documented, local or collect telephone calls shall be allowed at time of booking or after a reasonable length of time as determined by the administrator or designee. The administrator or designee shall document ~~a prisoner's~~ an inmate's refusal to make calls. In facilities where ~~prisoners~~ inmates have unlimited access to operational telephones, ~~a prisoner's~~ an inmate's refusal to make telephone calls is not required to be documented.

(7) Clean bedding and personal hygiene items shall be available and provided at the facility.

(8) Shower facilities shall be available with hot and cold running water at a ratio of at least one (1) shower for every twenty (20) ~~prisoners~~ inmates.

(9) Continual supervision shall be provided by a trained employee.

(10) Hourly visual sight checks shall be conducted and documented.

(11) Male and female ~~prisoners~~ inmates shall be housed ~~separately~~in separated living areas with ~~no~~ visual ~~contact~~separation between the two genders. Housing of inmates with mixed gender identification will be administered in a manner to maximize inmate safety.

(12) The facility shall comply with applicable~~federal, state and local health, life safety and~~ building and fire safety codes of the State Fire Marshall as provided in Title 74 O.S. § 317 et seq.

(13) Each ~~prisoner~~ inmate shall be provided at least three (3) meals each twenty-four (24) hours that meet the national recommended allowance for basic nutrition. At least two (2) hot meals shall be provided daily. There shall not be more than fourteen (14) hours between the breakfast and the evening meals.

(14) Minimum Fire Safety Requirements:

(A) **Automatic smoke detection.** The facility shall be equipped with a smoke detection system and a sprinkler system that ~~complies with the Fire Safety Code and~~ is approved by the Fire Marshal.

(B) **Bedding.** Polyurethane foam mattresses, pads and pillows are prohibited. Mattresses that are in compliance with the ~~Fire Safety Code~~requirements of the State Fire Marshall shall be used.

(C) **Emergency lighting.** Each facility shall have emergency lighting that meets the minimum standards ~~in the Life Safety and Fire Safety Codes~~of the State Fire Marshall.

(D) **Supervision of ~~prisoners~~ inmates.** ~~Jailer~~Detention Officer posts shall be located and staffed close enough to the lockup area to permit ~~jailers~~ Detention Officers to hear and respond promptly

to calls for assistance, and provide immediate response to emergencies.

(E) **Exits.** There shall be designated and marked emergency evacuation exits that comply with the ~~Fire Safety Code~~ requirements of the State Fire Marshall.

(15) ~~Prisoners~~ Inmates held over twenty-four (24) hours shall be issued and required to wear a clean set of ~~jail~~ detention facility clothing to include at least shirt and trousers or coveralls and footwear. ~~A prisoner~~An inmate shall receive a complete change of clothing at least one (1) time each week. ~~Prisoner~~ Inmate street clothing shall be placed in ~~prisoner~~ inmate property.

(16) A ~~trained jailer~~ Detention Officer shall be on duty on each floor where ~~prisoners~~ inmates are confined unless the facility is equipped with:

(A) Viewing access to all areas of the facility through closed circuit TV system; and

(B) An intercommunication system between the cell/living area and ~~jailer~~Detention Officer post/control center to communicate with and monitor ~~prisoners~~ inmates.

(17) Any lockup facility constructed or substantially remodeled after January 1, 1992 shall meet the requirements of OAC 310:670-5-11 except 310:670-5-11(b) (7), (8), and (13).

(18) Any lockup facility which houses ~~twenty (20)~~forty (40) ~~prisoners~~ inmates or less shall~~*shall not be required to have more than one jailer or dispatcher on site to provide for the security, custody and supervision of prisoners*~~ ~~[74:192(C)], provided the following requirements are met:~~ be staffed consistent with the requirements at Title 74 O.S. § 192(C)].

~~(A) The facility provides twenty four hour supervision of prisoner activity that is conducted either by direct observation or electronically by closed circuit television [74:192(C)(1)];~~

~~(B) The facility provides an intercommunication system that terminates in a location that is staffed twenty four (24) hours a day and is capable of providing an emergency response [74:192(C)(2)];~~

~~(C) The on-site jailer or dispatcher providing security, custody and supervision shall have completed the training required in OAC 310:670-5-10; and~~

~~(D)~~ Staff shall be available to perform sensitive functions and procedures as necessary to accommodate ~~prisoner~~ inmate gender.

(19) Any lockup facility *which houses more than forty prisoners and less than seventy-five prisoners* shall be staffed consistent with the requirements at Title 74 O.S. § 192(D)]. Staff shall be available to perform sensitive functions and procedures as necessary to accommodate inmate gender.

(20) Smoking policies in lockup facilities shall conform to the requirements in Title 21 O.S. § 1247.

SUBCHAPTER 5. STANDARDS FOR ~~JAIL~~DETENTION FACILITIES~~/DETENTION CENTER~~

310:670-5-1. Admission, release and records

The following admission and release procedures shall be followed. A facility shall have written policies and procedures for the reception, orientation and release of ~~prisoners~~ inmates.

(1) The admission process of new ~~prisoners~~ inmates shall include at least the following:

(A) Verification of arrest or commitment papers;

(B) ~~Complete~~A search of the individual upon entering the facility and a complete bodily search of the individual may be authorized prior to entering the general population;

(C) ~~Medical/mental health~~Intake screening by trained facility personnel utilizing, in part, a medical/mental health questionnaire approved by the Department of Health, or a screening conducted by a physician or other licensed medical personnel;

(D) Procedures to ensure orientation and understanding of facility rules;

(E) Issue bedding, clothing, and footwear; and

(F) Classification and assignment to a housing unit.

(2) Positive identification shall be made of the arresting or committing officer, including verification of the officer's authority to make the commitment.

(3) Each newly admitted ~~prisoner~~ inmate shall be permitted to complete at least two (2) local or collect telephone calls during the admission process or after a reasonable length of time as determined by the administrator. These telephone calls shall be documented and ~~a prisoner's~~an inmate's refusal to make telephone calls shall be documented. In facilities, where ~~prisoners~~ inmates have unlimited access to operational telephones, ~~a prisoner's~~an inmate's refusal to make telephone calls is not required to be documented.

(4) The types of personal property ~~prisoners~~ inmates may retain in their possession during confinement shall be specified in a facility's policies and procedures. Secure storage for property not authorized to be in the ~~prisoner's~~ inmate's possession, to include civilian street clothing shall be provided.

(5) A written itemized inventory shall be made of all personal property of a newly admitted ~~prisoner~~ inmate.

(6) Before ~~a prisoner~~ an inmate is released, positive identification shall be made of the individual and authority for release shall be verified.

(7) After the individual is positively identified, the ~~prisoner's~~ inmate's personal property shall be returned. The items shall be compared with the inventory list and the ~~prisoner~~ inmate shall sign for the returned property upon release.

(8) A logbook or computer record shall be maintained on all ~~prisoners~~ inmates admitted to the facility. The logbook or computer record shall include at least the following:

(A) Name of the ~~prisoner~~ inmate;
(B) Date and time of admission;
(C) Date and time of release;
(D) Offense charges;
(E) Arrest number;
(F) Date of birth;
(G) Race; and
(H) Gender;
(I) Social security number;
(J) Booking and intake number.

(9) An intake ~~form~~ shall be completed for every person admitted to a facility. The intake ~~form~~information shall be placed in the ~~prisoner's~~ inmate's file and shall contain at least the following information:

(A) Date and time of admission;
(B) Name and aliases of ~~prisoner~~ inmate;
(C) Address;
(D) Name and title of arresting or delivering officer and employing agency;
(E) Charges;
(F) Date of birth;
(G) Race;
(H) Gender;
(I) Height;
(J) Weight (verified by scale);
(K) Eye color;
(L) Hair color;
(M) Scars, tattoos and other identifying markings;
(N) Special medical and mental health comment-data and recommendations;
(O) Name, relationship, address and phone number of emergency contact; and
(P) Court judgment and sentence if the inmate is sentenced~~prisoner~~.

(10) Records shall be safeguarded from unauthorized disclosure. Written policies and procedures shall specify the process that ~~prisoners~~ inmates and former ~~prisoners~~ inmates are allowed access to their records.

(11) Individual records shall be maintained and kept current for each ~~prisoner~~ inmate which shall contain at least the following information:

(A) Intake information;
(B) Commitment papers and court order;
(C) Reports of disciplinary actions or unusual occurrences;
(D) Medical, mental health and dental orders issued by the health care authority;
(E) ~~A medical screening shall be performed and documented on all prisoners, and shall contain at a minimum the following information:~~
~~(i) Communicable diseases (i.e., HIV/STD, Hepatitis, TB);~~
~~(ii) Alcohol and drug abuse and treatment;~~
~~(iii) Allergies;~~
~~(iv) Injuries;~~
~~(v) Illnesses;~~
~~(vi) Medications;~~
~~(vii) Suicide risk or attempts~~The medical reception information collected pursuant to the requirements at OAC 310:670-5-8(2)(B);
(F) Photographs or video imaging; and
(G) Personal property inventory.

310:670-5-2. Security and control

The facility administrator shall develop and implement written policies and procedures for the safety, security and control of staff, ~~prisoners~~ inmates and visitors. Policies and procedures shall address at least the following:

(1) A central control center shall be maintained to coordinate the facility's internal and external security network. The control center shall be staffed twenty-four (24) hours-a-day. The control center or other location may be designated by the facility administrator and shall be responsible for ~~prisoner~~ inmate counts and key control.

(2) There shall be ~~a prisoner~~ an inmate count at the beginning of each shift change. The ~~prisoner~~ inmate count shall be documented.

(3) There shall be at least one (1) visual sight check every hour which shall include all areas of each cell, and such sight checks shall be documented.

(4) All security perimeter entrances, control center doors, cell block doors and doors opening into a corridor shall be locked except when used for authorized entry and exit. Staff members shall know which doors should be locked and under what circumstances they should be opened.

(5) No one person shall be permitted to enter ~~a prisoner's~~an inmate's cell or other area in which ~~a prisoner~~ an inmate is confined, past the last locked door, without backup assistance. Prior to breaching the last locked/secure door, central control or another staff member who can provide assistance will be notified. Documentation shall reflect the reason for the decision to enter a cell without backup assistance and a permanent record of the event shall be maintained.

(6) A weekly security device inspection shall be performed and priority corrective action taken on any discrepancy. A weekly inspection report shall be submitted to the facility administrator.

(7) Searches of facilities and ~~prisoners~~ inmates to control contraband shall be unannounced and at irregular intervals. These searches shall be documented.

(8) The availability, control and use of firearms, ammunition, chemical agents and related security equipment shall be sufficient to meet needs. The level of authority required for access to, and use of, security equipment shall be specified in policy and procedure. Chemical agents shall be used only with the authorization of the facility administrator or designee. ~~Jailers~~Detention Officers shall be trained in the use of chemical agents as prescribed by the manufacturer's specification.

(9) Firearms, ammunition, chemical agents and related security equipment shall be stored in a secure but readily accessible depository located outside the ~~prisoner~~ inmate living area. The facility may adopt policy and procedures

that authorize trained and certified ~~jailers~~ Detention Officers to be equipped with chemical agent and non-lethal weapons while on duty.

(10) Firearms, chemical agents and related security equipment shall be inventoried at least one (1) time each month to determine their condition and expiration dates. Firearms shall be cleaned and fired annually and repairs shall be made as needed.

(11) In an emergency situation, supervision of armed personnel is essential and only weapons/firearms authorized by the administrator shall be used.

(12) Personnel discharging firearms or using chemical agents shall submit a written report to the facility administrator documenting the nature of the incident and the identity of the personnel and ~~prisoners~~ inmates involved. All persons, employees and ~~prisoners~~ inmates involved in an incident where a weapon or chemical agent or force was used shall receive an immediate medical examination and/or treatment.

(13) Except in emergency situations, a weapon shall not be permitted in the secure area. There shall be a system of checking firearms and ammunition for temporary secure storage outside the secure perimeter.

(14) All keys shall be issued from a secure location designated by the ~~jail~~detention facility administrator, and a log shall be used to record the number of each key, location of the lock and the number of keys to each lock. The key control system shall include a current accounting of the location and authorized person to have each key. Keys shall be returned to the control center or a secure issue location at each shift change. There shall be at least one (1) duplicate key to each lock that is maintained in a secure location inaccessible to ~~prisoners~~ inmates.

(15) Tools and utensils such as hacksaw blades, welding equipment, culinary, barber shears and all sharps of similar-type equipment shall be secured, issued and used in accordance with prescribed policy and procedure. The control system shall also provide for this type of tool and equipment brought into the facility by outside authorized persons.

(16) ~~Prisoners~~ Inmates shall not possess flammable, toxic or caustic materials unless they are under supervision of qualified personnel. Such materials shall be stored in secure areas that are inaccessible to ~~prisoners~~ inmates.

(17) A post order shall be prepared for each post or duty assignment to be performed, and it shall specify the procedure to be followed for completing the assignment.

(18) There shall be written procedures for dealing with an escape. These procedures shall be available to all personnel and shall provide for sounding an alarm, alerting officials, mobilizing resources and ending the alert. Following an escape, the staff shall prepare an analysis of the escape and defects in the security system shall be corrected immediately.

(19) There shall be written procedures that specify what actions to take in emergency situations, i.e., fire, disturbances, and taking hostages. The procedures shall specify areas of responsibility, the staff to be involved, when and what authorities shall be notified, how the problem may be contained and what shall be done after the incident ends. Emergency housing and supervision of ~~prisoners~~ inmates shall be provided.

(20) Staff shall be knowledgeable of and trained in the implementation of the emergency plans.

(21) An emergency auxiliary power generator or battery-operated system that meets ~~fire and life safety codes~~ applicable requirements of the State Fire Marshall shall be provided to maintain lighting and essential equipment in an emergency.

(22) All emergency equipment shall be inspected at least one (1) time each month and corrective action taken as needed. These inspections shall be documented.

(23) The use of physical force by staff shall be restricted to instances of justifiable self-protection, protection of others, protection of property and prevention of an escape, and shall be only to the degree necessary. A written report shall be prepared and submitted to the administrator following the use of physical force. All persons, employees, and ~~prisoners~~ inmates involved in an incident where a weapon, chemical agent, or physical force was used shall receive an immediate physical inspection, and if affected by the action, shall receive a medical examination and treatment.

(24) Instruments of restraint such as handcuffs, leg irons, restraint chairs, restraint beds and straitjackets, shall not be applied longer than authorized by policy and procedure and equipment ~~manufacturers~~manufacturer's specifications. ~~Prisoners~~ Inmates placed in restraints shall not be left without required supervision. Instruments of restraint shall be used only as follows:

(A) As a precaution against escape during transfer;

(B) For medical/mental health reasons, by direction of the designated medical authority and ~~jail~~ detention facility administrator or designee; and

(C) To prevent ~~prisoner~~ inmate self-injury, injury to others or property damage, and then only with the approval of the ~~jail~~detention facility administrator or designee.

(25) Guidelines for transporting ~~prisoners~~ inmates shall emphasize safety and security and shall be available to all staff involved in transporting ~~prisoners~~inmates.

(26) All entrances and exits to the facility shall be secure.

(27) ~~In case of a death or an escape with injury, the Department shall be notified immediately~~.

~~(28)~~ The Department shall be notified no later than the next working day if any of the following incidents occur:

(A) Extensive damage to ~~jail~~detention facility property;

(B) Serious injury to staff or ~~prisoner~~ inmate defined as life threatening or requiring transfer to outside medical facility;

(C) Escape;

(D) Serious suicide attempt, defined as life threatening or requiring transfer to outside medical facility; and

(E) Death.

(~~29~~ 28) Trusties shall be either locked down or confined to the facility when not engaged in a job assignment. Trusties permitted outside the facility shall be supervised according to the written policy of the sheriff, chief of police, ~~jail~~detention facility administrator and/or as required by state statute.

310:670-5-3. Supervision of ~~prisoners~~ inmates

(a) The movement of ~~prisoners~~ inmates from one location to another shall be controlled and supervised by staff.

(b) Staff shall provide twenty-four (24) hour supervision of ~~prisoners~~ inmates.

(c) ~~Jailer~~Detention Officer posts shall be located and staffed to monitor all ~~prisoner~~ inmate activity either physically or electronically and close enough to the living areas to respond immediately to calls for assistance, and respond to emergency situations. A ~~jailer~~ Detention Officer shall be on duty at all times at each location where ~~prisoners~~ inmates are confined or the observation shall be conducted by closed circuit TV. The location shall be equipped with an intercommunication system that terminates in a location that is staffed twenty-four (24) hours a day and is capable of providing an emergency response.

(d) There shall be sufficient staff to perform all assigned functions relating to security, custody and supervision of ~~prisoners~~ inmates. Staff assignments shall provide for backup assistance for all employees entering locations where ~~prisoners~~ inmates are confined.

(1) Any city jail or county ~~jail~~detention facility which houses ~~twenty (20)~~ forty (40) ~~prisoners~~ inmates or less ~~*shall not be required to have more than one jailer or dispatcher on site to provide for the security, custody and supervision of prisoners* [74:192(C)] provided the following requirements are met:~~

~~(A) The facility provides twenty-four hour supervision that is conducted either by direct observation or electronically by closed circuit television [74:192(C)(1)];~~

~~(B) The facility provides an intercommunication system that terminates in a location that is staffed twenty-four (24) hours a day and is capable of providing an emergency response [74:192(C)(2)]; and~~

~~(C) The on-site jailer or dispatcher providing security, custody and supervision, shall have completed the training required in OAC 310:670-5-10~~ shall be staffed consistent with the requirements at Title 74 O.S. § 192(C)].

(2) ~~Facilities which house more than twenty (20) prisoners shall have on site one (1) dispatcher or control center operator and a minimum of two (2) jailers on the premises.~~ Any city jail or county detention facility *which houses more than forty prisoners and less than seventy-five prisoners* shall be staffed consistent with the requirements at Title 74 O.S. § 192(D)].

(3) Facilities which house seventy-five inmates or more shall have on site one (1) dispatcher or control center operator and a minimum of two (2) Detention Officers on the premises.

(e) All ~~prisoners~~ inmates shall be searched ~~thoroughly~~ when entering or leaving the security area.

(f) Policies and procedures shall specify a system for the supervision of female ~~prisoners~~ inmates by male staff and supervision of male ~~prisoners~~ inmates by female staff.

(g) When both male and female ~~prisoners~~ inmates are housed in a facility, at least one male and one female ~~jailer~~ Detention Officer shall be available to perform sensitive functions and procedures as necessary to accommodate ~~prisoner~~ inmate gender.

(h) ~~A prisoner~~An inmate shall be prohibited from supervising, controlling, exerting or assuming any authority over another ~~prisoner~~ inmate.

(i) The name and telephone number of the practicing attorneys and bonds persons in the area shall be posted conspicuously near the telephone used by ~~prisoners~~ inmates. This can be a telephone book.

(j) Direct supervision of ~~prisoners~~ inmates shall be permitted if the facility has policies and procedures in place to ensure the safety of employees, ~~prisoners~~ inmates and visitors and if the physical plant design lends itself to direct supervision operation.

310:670-5-4. ~~Prisoner~~ Inmate rules, ~~and~~ discipline and grievances

(a) Written facility rules shall list all chargeable offenses, and the range of sanctions and disciplinary procedures to be followed and shall be made available to ~~prisoners~~ inmates. A rule book that contains all chargeable offenses, range of sanctions, and disciplinary procedures is provided to each ~~prisoner~~ inmate upon booking and is translated into those languages spoken by the significant number of ~~prisoners~~ inmates. When a literacy or language problem prevents ~~a prisoner~~ an inmate from understanding the rule book, a staff member shall assist the ~~prisoner~~ inmate.

(b) All persons who deal with ~~prisoners~~ inmates shall be familiar with the rules of ~~prisoner~~ inmate conduct, and the approved sanctions. To prevent discrepancies among staff in interpretations, in-service training shall be conducted as often as necessary by direction of the administrator.

(c) Employees shall prepare a disciplinary report when they have reason to believe that ~~a prisoner~~ an inmate has committed a violation of rules.

(d) Disciplinary reports prepared by staff shall include at least the following:

(1) Specific rules violated;

(2) A formal statement of the charge;

(3) Any unusual ~~prisoner~~ inmate behavior;

(4) Any staff or ~~prisoner~~ inmate witness;

(5) Disposition of any physical evidence;

(6) Any immediate action taken, including the use of force; and

(7) Date and time of the report.

(e) Administrative due process procedures shall be followed for all rule violations. A chairperson or a committee may be appointed by the administrator to hear the charges and make a decision on appropriate action to be taken. Due process procedures shall include at least the following elements:

(1) Written rules that ~~specify~~specifies offenses and sanctions;

(2) ~~Prisoner~~ Inmate has been made aware of the rules and sanctions;

(3) ~~Prisoner~~ Inmate receives written notice of the charges and ~~time of~~is offered a hearing prior to ~~the hearing~~ sanction;

(4) ~~Prisoner~~ Inmate is present at the hearing and hears the evidence, except for confidential information or ~~presents~~if the inmate displays unruly behavior or waives that right in writing;

(5) ~~Prisoner~~ Inmate has the right to make ~~his own~~a statement;

(6) ~~Prisoner~~ Inmate has the right to call relevant witnesses;

(7) ~~Prisoner~~ Inmate may be assisted by a willing ~~prisoner~~ inmate or staff member of ~~his~~ their choosing;

(8) The decision shall be based solely on the evidence and shall be rendered in writing;

(9) Record shall be made of the hearing;

(10) Decision shall be reviewed by the facility administrator or designee;

(11) ~~A prisoner~~ An inmate shall have the right to appeal the decision of the facility administrator or designee to the next level of authority;

(12) ~~If a prisoner is found not guilty, the disciplinary report and all associated documents shall be removed from the prisoner's file;~~

~~(13) If a prisoner is found guilty, the findings~~A record of the charges and hearing disposition shall be maintained in the ~~prisoner's~~ inmate's file.

(f) If ~~a prisoner~~ an inmate allegedly commits an act covered by statutory law, the case may be referred to the appropriate court or law enforcement officials for prosecution.

(g) There shall be a written policy and procedure to respond to ~~prisoner~~ inmate requests ~~to~~of staff and grievances. The grievance policy shall conform to the requirements in Title 57 O.S. § 566.3 and include the following:

(1) procedures whereby any inmate may appeal and have resolved grievances;

(2) the types of complaints covered and excluded consistent with applicable state and federal law and rule, and court decisions, to include policies and conditions within the jurisdiction of the facility that affect the inmate personally, actions by employees and inmates, and incidents occurring within the facility that affect the inmate personally;

(3) a grievance form or instructions for registering a grievance;

(4) resolution of the grievance at the lowest appropriate staff level;

(5) appeal to the next level of review;

(6) written reasons for denial of grievance at each level of review which acts on the grievance;

(7) provision for response within a reasonable time limit;

(8) provision for resolving questions of jurisdiction within the facility; and.

(9) procedures to control the submission of an excessive number of grievances.

(h) County jails *may deduct an amount of ten cents ($0.10) per page from any monies collected from an inmate for copies made at the request of the inmate* [Title 19 O.S. § 531(B)].

310:670-5-5. Classification and segregation

The facility administrator shall develop and implement written policies and procedures for the classification and segregation of ~~prisoners~~ inmates. The classification plan shall ensure the safety of ~~prisoners~~ inmates and staff. The following criteria shall ensure an adequate classification and reclassification system.

(1) ~~Prisoners~~ Inmates of opposite sex shall be housed ~~separately~~in separated living areas. Separation shall be by substantial architectural arrangements which permit no sustained ~~visual~~sight contact. Housing of inmates with mixed gender identification will be administered in a manner to maximize inmate safety.

(2) Juvenile offenders.

(A) If detention of a juvenile is authorized, such juveniles shall be housed completely separate from adults without sustained sight and sound contact. Inadvertent contact with incarcerated adults outside of jail living areas not dedicated for use by juvenile offenders should be minimized.~~Separation shall be by substantial architectural arrangements which permit no visual contact with adult prisoners.~~

(B) A juvenile may be held for up to six (6) hours for the purpose of identification, investigation, processing, release to parent(s), transfer to court, or transfer to juvenile facility following the initial custody.

(C) A juvenile criminal-type offender may be securely detained in an adult jail or lockup for up to six hours immediately before or immediately after a court appearance, provided sight and sound separation is maintained. This period may be extended to twenty-four hours (excluding weekends and holidays) where the jurisdiction is outside the metropolitan statistical area where:

(i) state law requires an initial court appearance within twenty-four (24) hours after being taken into custody;

(ii) there is no acceptable alternative placement; and

(iii) the jail has been determined by the Department to provide for sight and sound separation.

(3) ~~Prisoners~~ Inmates considered to be a threat to other ~~prisoners~~ inmates or staff shall be housed separately from other ~~prisoners~~ inmates for the following reasons:

(i) ~~Prisoner's~~ Inmate's past criminal history;

(ii) The nature and severity of the charges pending against the ~~prisoner~~ inmate;

(iii) ~~Prisoner's~~ Inmate's behavior while in the facility; and

(iv) Other relevant reasons as directed by the administrator.

(4) ~~Prisoners~~ Inmates may be double-celled or confined to dormitory style housing if the floor space meets the square footage requirements. These ~~prisoners~~ inmates shall be afforded the same living conditions and privileges as those occupying the general population. Any exception regarding conditions and privileges shall be defined by the administrator.

(5) ~~Prisoners~~ Inmates who are intoxicated or under the influence of a controlled substance shall be housed separately from other ~~prisoners~~ inmates until such time as the medical authority or the ~~jail~~detention facility administrator determines their suitability for placement into general population or other appropriate housing.

(6) ~~Prisoners~~ Inmates who ~~are mentally ill~~ appear to have a significant medical or psychiatric problem~~shall~~ may be separated from other ~~prisoners~~ inmates. ~~Every effort shall be made to contact a local hospital, clinic or mental health facility for the detention of the mentally ill.~~

(7) Unsentenced ~~prisoners~~ inmates shall be separated from sentenced ~~prisoners~~ inmates, to the extent possible, and shall be permitted whatever confinement is least restrictive unless ~~prisoner~~ inmate behavior or other security considerations dictate otherwise.

(8) Classification and segregation shall not be done solely on the basis of race, color, creed or national origin.

310:670-5-6. Safety, sanitary and hygiene standards

The administrator shall develop and implement policies and procedures for the safety and maintenance of sanitation throughout the facility. These shall include at least the following:

(1) The facility shall ~~comply with state and local sanitation and health codes, as well as the Life Safety code~~ be kept in a clean condition consistent with the requirements in Title 57 O.S. § 4.

(2) There shall be a housekeeping plan for the facility that includes a cleaning schedule with specific duties. ~~Cleaning activities performed by prisoners shall be supervised at all times.~~Supervision of cleaning activities performed by inmates will be provided consistent with the facility's policy.

(3) Floors shall be kept clean, dry and free of hazardous substances.

(4) ~~Prisoners~~ Inmates shall be provided with ~~cleaning~~ materials ~~daily~~and supplies on a routine sufficient to maintain clean showers, washbasins and toilets.

(5) Smoking policies in ~~a~~ city and county ~~jail facility~~detention facilities shall ~~not be permitted in accordance with~~conform to the requirements in Title 21 O.S. Section 1247.

(6) Upon admission or after commitment by the court, each ~~prisoner~~ inmate shall be issued personal hygiene items to include soap, towel, toilet paper, toothbrush and toothpaste. Feminine hygiene articles shall be provided upon request. Razors are issued to each ~~prisoner~~ inmate~~upon request~~ consistent with facility policy, and collected immediately after use and disposed of or stored as specified by facility policy and procedures. ~~Prisoners~~ Inmates shall not share razors. With the exception of toilet paper and feminine hygiene items, ~~prisoners~~ inmates who are not indigent and have funds in their ~~prisoner~~ inmate account may be required to purchase hygiene items from the ~~jail~~detention facility.

(7) Clean bedding shall be issued to each ~~prisoner~~ inmate who is confined overnight in the facility except where indicated by circumstances defined in the facility's policy. A standard issue of bedding shall include:

(A) ~~An approved~~A mattress with a cleanable surface; and

(B) Enough clean blankets ~~to provide comfort under the~~consistent with existing interior weather conditions.

(8) ~~Prisoners~~ Inmates held over twenty-four (24) hours shall be issued a clean set of appropriately sized ~~jail~~ detention facility clothing to include, at least, ~~shirts~~a shirt and trousers~~,~~ or coveralls and footwear.

(9) ~~A prisoner~~ An inmate shall be given an opportunity to receive a complete change of clothing at least one (1) time each week.

(10) Clean bedding and towels shall be offered at least one (1) time each week.

(11) Laundry services shall be sufficient to permit regular exchange of all ~~prisoner~~ inmate clothing, bedding and towels.

(12) Blankets and mattresses shall be cleaned or sanitized before reissue.

(13) Issuance of all clothing and bedding shall be documented and ~~prisoners~~ inmates shall be held accountable for these items.

(14) The supply of bedding, linens and clothing shall exceed that required for the facility's maximum ~~prisoner~~ inmate rated population capacity.

(15) Under extreme circumstances it may be necessary for the ~~administrator~~ administration to authorize the removal of linens, clothing and bedding from ~~a prisoner~~an inmate. Such action may be taken only as a measure to protect the ~~prisoner~~ inmate from self-injury, to protect others or to prevent facility damages. Such actions shall be documented and reviewed at least ~~daily~~weekly by ~~jail~~detention facility administration or an appointed designee. A paper gown or another appropriate garment may be provided as appropriate.

(16) Sufficient showers shall be provided in housing units to provide ~~prisoners~~ inmates the opportunity to bathe at least three (3) times each week. ~~Prisoners~~ Inmates working in food service shall be required to bathe daily.

(17) Haircuts shall be available to ~~prisoners~~ inmates based on arrangements specified in facility policy and procedures.

(18) The potable water supply shall meet all state and local water quality standards. Hot and cold water shall be provided in showers and washbasins.

(19) Any condition conducive to harboring or breeding insects, rodents or other vermin shall be eliminated immediately. Licensed pest control professionals shall be

contracted to perform pest control on a scheduled basis specified in the facility policy and procedure.

(20) Liquid and solid wastes shall be collected, stored and disposed of in a manner that avoids nuisance and hazards and protects the health and safety of ~~prisoners~~ inmates and staff. ~~Garbage shall be stored in rust resistant, water tight, rodent proof and easily cleanable containers with tight fitting lids.~~ Biomedical waste shall be stored and destroyed in compliance with state and federal requirements.

(21) The facility's fire prevention policies and procedures shall ensure the safety of staff, ~~prisoners~~ inmates and visitors and shall conform to the requirements of the Oklahoma State Fire Marshal, as provided in Title 74 O.S. § 317 et seq. These shall include, but not be limited to an adequate fire protection service; a system of fire inspection and testing of equipment and documentation on a weekly basis; and the availability of fire hoses or extinguishers at appropriate locations throughout the facility. The facility shall have an automatic fire alarm and heat and smoke detection system approved by the Oklahoma State Fire Marshal, as provided in Title 74 O.S. § 317 et seq.

(22) ~~There shall be containers for refuse in prisoner living quarters and in other locations throughout the facility. Containers shall be fire retardant and approved for use in a jail facility.~~

~~(23)~~ The facility shall have a written evacuation plan in the event of fire or major emergency. ~~Prisoners~~ Inmates shall be instructed on emergency procedures.

(~~24~~23) There shall be a reliable means to permit prompt release of ~~prisoners~~ inmates from locked areas in case of emergency. The route of evacuation shall be posted in conspicuous locations throughout the facility.

(~~25~~24) Facility furnishings, walls, ceilings and floors shall be constructed of material that meets ~~the Oklahoma Fire Safety Code~~the code requirements of the Oklahoma State Fire Marshal, as provided in Title 74 O.S. § 317 et seq.

(~~26~~25) Heating systems shall be capable of maintaining a temperature of at least sixty-five (65) degrees Fahrenheit. Open-faced or un-vented heaters are not permitted.

(~~27~~26) Air circulation and ventilation shall be capable of maintaining a temperature of at least eighty-five (85) degrees Fahrenheit or lower. If temperature exceeds eighty-five (85) degrees Fahrenheit, positive air movement shall be provided by use of fans, coolers, or air conditioning units. New facilities or substantially remodeled facilities shall be equipped with central air conditioning or individual air conditioning units which are capable of maintaining a temperature of eighty-five (85) degrees Fahrenheit.

310:670-5-7. Food services and dietary requirements

~~The jail administrator shall comply with OAC 310:256.~~

(a~~1~~) Each ~~prisoner~~ inmate shall be provided at least three (3) meals each twenty-four (24) hours that meet the national recommended allowance for basic nutrition. At least two (2) hot meals shall be provided daily. There shall not be more than fourteen (14) hours between the breakfast and evening meals.

(b~~2~~) Special diets shall be available for ~~prisoners~~ inmates ~~upon~~ with a physician's or dentist's ~~authorization~~order. The order should be supported by evidence of the medical condition addressed by the diet. Special diets shall be planned and prepared by one who is skilled in preparing special diets according to a physician's or dentist's ~~authorization~~order. Inmate diets are modified when ordered by the appropriate licensed individual to meet specific requirements related to clinical conditions.~~Special diets shall conform as closely as possible to the food served other prisoners.~~

(c~~3~~) If it is a requirement of ~~a prisoner's~~an inmate's religious beliefs that the ~~prisoner~~ inmate adhere to dietary practices, reasonable provision shall be made for such diets from meals that are currently being served.

(d~~4~~) A uniform record keeping system shall be developed to record the items served for each meal. This record shall be maintained in a manner that is retrievable for review and maintained for a minimum of one month.

(e~~5~~) Food shall not be used as a reward or disciplinary action, nor shall the menu be varied for the same reason.

(f~~6~~) All meals shall be served under the ~~direct~~ supervision of staff. ~~A prisoner's~~ An inmate's refusal to eat as an act of grievance shall be documented ~~at each meal~~consistent with facility policy and reported to jail administration on a periodic basis as established by facility policy. A record of the grievance and its attempted resolution should conform with the grievance requirements at 310:670-5-4(g). The designated medical authority shall be advised of the refusal. The refusal to eat one meal shall not trigger the requirements in this paragraph.

(g~~7~~) Any ~~prisoner~~ inmate assigned to food service shall be closely supervised and shall maintain a high degree of personal hygiene. Each ~~prisoner~~ inmate, providing food service or acting as a food employee, shall be ~~screened for communicable diseases~~ instructed they are to inform the kitchen supervisor and shall not work in the kitchen if they are experiencing nausea, vomiting, abdominal cramps, diarrhea, an active respiratory infection, or fever, or have open sores on their hands or arms. Each ~~prisoner~~ inmate, providing food service or acting as a food employee, shall wear a hairnet or hat, beard guard, and gloves while preparing and serving food.

(h~~8~~) Ice machines that are available to the ~~prisoners~~ inmates shall be dispenser-type.

(i~~9~~) Menus shall be reviewed and approved in advance by a registered dietician or a request may be made to the Department of Health for a standardized menu.

310:670-5-8. Medical care and health services

Adequate medical care shall be provided in a facility. The administrator shall develop and implement written policies and procedures for complete emergency medical and health care services. Policies and procedures shall include at least the following:

(1) The administrator shall be responsible for the facility's medical services and shall develop, with the assistance of a designated medical authority, the facility's

health care plan. Security restrictions shall be considered in the development of the plan, and any medical personnel included in the plan shall have their responsibilities regulated by written job descriptions. The health care plan shall cover at least the standards outlined in this section.

(2) ~~Medical triage~~Intake screening shall be performed on all ~~prisoners~~ inmates immediately upon admission to the facility and before being placed in the general population or housing area. ~~Those individuals who appear to have~~An inmate whose screening indicates a significant medical or psychiatric problem, or who may be a suicide risk, shall be ~~transported to the supporting medical facility as soon as possible. They shall be housed separately in a location where they can be~~ observed frequently by the staff ~~at least~~consistent with the facility's policy and the identified need until the appropriate medical evaluation has been completed. ~~If after stringent~~ After medical evaluation~~by the highest-ranking mental health professional, in conjunction with a senior detention supervisor~~, these ~~prisoners~~ inmates may be ~~authorized to share the same cell~~assigned to housing consistent with the medical evaluation.

(A) Medications in the possession of the ~~prisoner~~ inmate at the time of the booking, whether prescription or over-the-counter shall be logged, counted and secured. ~~Prescription medications shall be provided to the prisoner as directed by a physician or designated medical authority. The prisoner shall be observed to ensure the prisoner takes the medication. Neither prescription nor over-the-counter medications shall be kept by a prisoner in a cell with the exception of prescribed nitroglycerin tablets and prescription inhalers. Over-the-counter medications shall not be administered without a physician's approval unless using prepackaged medications~~*Prescription medications shall be provided to the* [inmate] *as directed by a physician or designated medical authority. The* [inmate] *shall be observed to ensure the prisoner takes the medication. The physician or designated medical authority shall be particularly aware through his or her training of the impact of opiate or methadone withdrawal symptoms that may occur in regard to the mental and physical health of the* [inmate]*. The physician or medical authority shall prescribe and administer appropriate medications to the* [inmate] *pursuant to Section 5-204 of Title 43A of the Oklahoma Statutes as the medical authority deems appropriate to address those symptoms. Neither prescription nor over-the-counter medications shall be kept by* [an inmate] *in a cell with the exception of prescribed nitroglycerin tablets and prescription inhalers. Over-the-counter medications shall not be administered without a physician's approval unless using prepackaged medications* [57 O.S. § 4.1(1)]. This authorization to allow certain medications in a cell does not require a facility to allow the medications in a cell where inmate safety is threatened or abuse of the medication is documented. Prepackaged over-the-counter medications are those medications provided in single-dose packaging.

(B) Medical reception information shall be ~~recorded on a printed screening form~~documented in a format approved by the designated medical authority which shall include inquiry into:

(i) Current illnesses and health problems including medications taken and any special health requirements;

(ii) Behavioral observation, including state of consciousness and mental status;

(iii) Notation of body deformities, trauma markings, i.e., bruises, lesions, ease of movement, and jaundice;

(iv) Condition of skin and visible body orifices, including infestations; and

(v) Disposition/referral of ~~prisoners~~ inmates to qualified medical personnel on an emergency basis.

(3) Delousing procedures shall be developed in coordination with the designated medical authority and used whenever vermin are detected.

(4) ~~Prisoners~~ Inmates are informed upon admission to the facility about the procedures for gaining access to medical and health care services. These procedures shall be posted in a conspicuous place.

(5) Each facility shall have a plan and provide twenty-four (24) hour emergency medical and dental care. Emergency plans shall at least include arrangements for:

(A) The use of one (1) or more hospital emergency rooms or other appropriate health care facility;

(B) The use of an emergency medical vehicle; and

(C) An emergency on-call physician and dentist when the emergency health care facility is not located in a nearby community.

(6) If the need is indicated by the ~~medical~~intake screening at booking, ~~prisoners~~ inmates held for forty-eight (48) hours or more, shall ~~undergo~~be scheduled for a medical examination which shall be conducted by licensed medical personnel.

(7) An appointment shall be made with a physician or other licensed medical personnel, as defined at Title 57 O.S. § 4.1(3), within forty-eight (48) hours of a valid written request unless more immediate action is dictated by the severity of the current situation.

(8) If medical services are delivered in the facility, adequate space, equipment, supplies and materials as determined by the designated medical authority, shall be provided for primary health care delivery.

(9) First aid kits approved by the designated medical authority~~,~~ shall be available in each facility. They shall be located in an area(s) also approved by the designated medical authority.

(10) Referral sources shall be identified in advance by the designated medical authority or administrator.

(11) The administration of medications, and the date, time and place of medical encounters shall be documented.

(A) The facility may maintain bulk supplies of nonprescription drugs for dispensing to inmates if ordered or otherwise authorized by a physician or other licensed medical personnel, currently licensed to practice medicine in this state. Nonprescription drugs may be dispensed to an inmate for nonscheduled dosage regimens.

(B) A facility may maintain nonprescription drugs for dispensing from a common or bulk supply if all of the following are accomplished:

(i) The facility must have and follow a written policy and procedure to assure safety in dispensing and documentation of medications given to each resident.

(ii) The facility shall maintain records which document the name of the medication acquired, the acquisition date, the amount and the strength received for all medications maintained in bulk.

(iii) Only licensed nurses, physicians, pharmacists or certified medication aides (CMA) may dispense for administration these medications and only upon the written order for as needed (p.r.n.) or nonscheduled dosage regimens, as documented in the clinical record of the inmate.

(iv) The facility shall maintain records of all bulk medications which are dispensed on an individual signed medication administration record (MAR).

(v) The original labels shall be maintained on the container as it comes from the manufacturer or on the unit-of-use (blister packs) package.

(vi) The maximum size of packaging shall be established by the facility in its policy and procedures and shall insure that inmates receive the correct dosage; provided however, that no liquid medications shall be acquired nor maintained in a package size which exceeds 16 fluid ounces.

(vii) Facilities may have only oral analgesics, antacids, and laxatives for bulk dispensing and/or drugs listed in a facility formulary developed or approved by the medical director.

(C) Facilities are not required to package nonprescription drugs in individual containers with individual labels.

(D) These provisions shall not prohibit authorized over the counter sales, from the commissary, of medications prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(12) Copies of the medical record, or a discharge summary if any, shall accompany ~~a prisoner~~ an inmate upon transfer to another facility.

(13) Any remaining medications, for which the inmate has been charged, shall accompany the ~~prisoner~~ inmate upon transfer to another facility or upon release, or those charges shall be reversed. Medications that were in the possession of the inmate on admission, and were not dispensed, and for which the inmate has a lawful prescription, shall be returned unless there is documentation of abandonment. The amount of medications provided shall be documented. The count at that time shall be logged. Continuity of care is required when transferring or discharging inmates from the facility, including when referring an inmate to community-based providers. When health care is transferred to another facility or to providers in the community, appropriate information shall be shared with the new providers in accordance with consent requirements. Sufficient medications shall be provided upon transfer or release for inmates with known serious health conditions. Sufficient medication should be coordinated with the receiving facility. The inmate is liable for payment of the cost of these medications pursuant to Oklahoma statute [Title 19 O.S. § 746(B)].

(14) Staff shall wear disposable gloves when dealing with possible exposure to ~~a prisoner's~~an inmate's body fluids.

(15) Biomedical waste shall be stored and destroyed in compliance with state and federal requirements.

(16) Sharps, i.e., needles, lancets and scalpels shall be disposed of in a puncture-proof container.

(17) Staff shall receive a TB skin test as a part of the pre-employment evaluation and each twelve (12) months as long as the test is negative. Individuals with positive skin tests shall be referred to the local health department or personal physician for evaluation. Employees will also be offered hepatitis B vaccination within one month of employment, at no cost to the employee.

(18) Universal precautions shall be used at all times by all employees.

(19) Medication aides are restricted in the scope of activities they may perform. Those restrictions are established in Title 63 O.S. § 1-1950.3(E).

(20) County jails, under the authority of the sheriff and Title 19 O.S. § 531(B), may *deduct monies collected from an inmate as a medical payment on account for each medical services visit the inmate receives while incarcerated in the county jail, except as otherwise provided in* Title 19 O.S. § 531(B).

(21) Inmates are responsible for the costs of incarceration, medical care and treatment as provided in Section 979a of Title 22 of the Oklahoma Statutes.

310:670-5-9. Mail and visitation

Written policies and procedures shall govern ~~prisoner~~ inmate correspondence and visitation. For the purposes of this section, correspondence, mail and email shall have the same meaning. Policies and procedures shall include at least the following:

(1) There shall be no limitations on the volume of mail ~~a prisoner~~ an inmate may send or receive as long as the ~~prisoner~~ inmate provides postage or email access fees and the inmate conforms with correspondence policies. The facility shall provide postage or email access, one (1) time per week, for ~~prisoners~~ inmates who do not have funds for

correspondence with their attorney, court officials, elected officials, and next of kin.

(2) The number of approved correspondents for ~~a prisoner~~ an inmate shall be unlimited unless restrictions are imposed based on violation of the facility's correspondence policy. A facility shall allow ~~prisoners~~ inmates access to publications to the extent that such access is consistent with security.

(3) ~~Incoming~~Prior to delivery, incoming and outgoing ~~prisoner~~ inmate mail ~~shall~~may be subject to inspection for contraband items or violations of content restrictions as established in the facility's correspondence policies ~~not be read except when such correspondence, in the opinion of the administrator, poses a threat to safety and security~~.

(A) Outgoing mail violating correspondence policies will be returned to the inmate with an explanation of the violation unless it is used as evidence in a court/ disciplinary hearing. The inmate may also be placed on a restricted correspondence list and/or be subject to disciplinary action.

(B) Inmate mail received which violates the facility's correspondence policies will be held for 15 days pending inmate response to a written notice of the facility's intent to return the correspondence. With the exception of contraband in violation of state or federal law, pending the outcome of any grievance hearing, the inmate will be notified as to his/her option for disposal by either having the material returned to the sender, sending the material home at the inmate's expense, or having the material destroyed.

(4) Incoming ~~prisoner~~ inmate mail from court officials, the ~~prisoner's~~ inmate's attorney and elected public officials shall be opened and inspected for contraband only in the presence of the ~~prisoner~~ inmate.

(5) Outgoing ~~prisoner~~ inmate mail to court officials, the ~~prisoner's~~ inmate's attorney and elected public officials shall not be opened.

(6) Cash, checks or money orders received from incoming mail ~~shall be removed and credited to the prisoner's account~~ may be accepted and credited to the inmate's account at the discretion of the facility's policy. Charges to inmate funds must conform to Title 19 O.S. § 531. Contraband shall be removed if it is discovered in either incoming or outgoing mail. ~~Contraband shall be considered anything not authorized to be in a prisoner's possession.~~

(7) Outgoing mail shall be collected and sent daily except Sundays and holidays.~~and incoming~~ Incoming mail shall be delivered to ~~prisoners~~ inmates within twenty-four (24) hours of its arrival at the facility with the exception of weekends.

(8) The number of visitors ~~a prisoner~~ an inmate may receive and the length of visits shall be limited only by facility security, visitation, space and schedules.

(9) Licensed attorneys ~~and ministers~~ shall be allowed additional visitation privileges and accommodations, which ensure privacy and are consistent with security.

(10) Policies and procedures shall be developed to address~~allow~~ special visits for persons who have come long distances.

(11) Visitors shall register upon entry to the facility and may be searched as established by jail policy.

(12) Visitation by a person under age 18 may be permitted if the visitor is a member of the ~~prisoner's~~ inmate's immediate family and if a parent or legal guardian accompanies the visitor.

(13) Licensed clergy may be allowed additional visitation privileges and accommodations which ensure privacy and are consistent with security.

(14) A court order restricting outgoing or incoming correspondence or telephone calls for an inmate shall supersede this rule.

310:670-5-10. Training and staff development

(a) **Training policies.** The administrator shall develop policies and procedures for staff orientation and training. The training program shall be supervised by a designated employee. A facility with more than one-hundred (100) employees shall employ a full-time person for staff orientation and training.

(b) **Training and testing requirements.** Policies and procedures shall include at least the following requirements for training:

(1) A new employee whose primary responsibilities include supervision of inmates shall receive orientation and training prior to job assignment by the employing agency. An employee who has received orientation and training may be assigned to inmate supervision prior to passing the Detention Officer examination.

(2) All employees, including the ~~jail~~detention facility administrator and all supervisors, ~~who work in direct contact with prisoners during the first year of their employment~~whose primary responsibilities include supervision of inmates, shall receive at least twenty-four (24) hours of training during the first year of their employment that covers at least the following:

(A) Security procedures;

(B) Supervision of ~~prisoners~~ inmates;

(C) Report writing and documentation;

(D) ~~Prisoner~~ Inmate rules and regulations;

(E) Grievance and disciplinary procedures;

(F) Rights and responsibilities of ~~prisoners~~ inmates;

(G) Emergency procedures;

(H) First aid and cardiopulmonary resuscitation; and

(I) Requirements of this Chapter.

(3) After the first year of employment, an employee ~~who works in direct contact with prisoners~~ whose primary responsibilities include supervision of inmates shall receive at least the ~~following~~ training listed below. ~~This training shall be in addition to any requirements for completion of first aid and cardiopulmonary resuscitation. Before training begins a training schedule shall be~~

~~provided to the Department for approval, listing subjects, number of hours, date, time, location and instructor.~~

(A) Four (4) hours review of the required training ~~items~~identified in paragraph two (2) of this section.

(B) ~~Eight (8)~~Four (4) hours of training ~~provided~~as directed by the administrator; the content and instructors shall be selected by the administrator.

(C) ~~A test shall be given by the Department that covers this Chapter~~Renewal training as required for first aid and cardiopulmonary resuscitation skills.

(4) A documentation log shall be ~~sent to the Department~~ maintained by the Administrator~~for each person who completes the required~~ to record the courses completed by each employee for their initial and annual training and include test results.

(5) Training may be given through other programs that have first been reviewed and approved by the Department.

(6) An examination covering the standards in this Chapter is required for new employees whose primary responsibilities include supervision of inmates. The examination shall be completed within the first year of employment unless there is documented evidence an examination was not available, or other extenuating circumstances caused the delay. In the event of delayed examination, an examination will occur at the next available opportunity. A passing score on the test ~~given~~as administered by the Department or its representatives shall be seventy (70) percent or higher. Any person scoring less than seventy (70) percent shall not be considered to have satisfactorily completed training and may retest as necessary for a period of up to one year.

(c) **Training program approval.** An entity which desires to sponsor a training program shall file an application for approval on the forms prescribed by the Department.

(1) No training examination program shall be operated, and no students shall be solicited or enrolled, until the Department has approved the program.

(2) The application requires the following information:

(A) Name and address for the entity sponsoring the program and for the contact person for the program;

(B) The location of the administrative office of the program and the location where records are maintained;

(C) A program plan that follows the minimum curriculum for the standards in this Chapter, as prescribed by the Department including, but not limited to:

(i) the specific knowledge outcomes for the course(s);

(ii) an outline of the associated content for each knowledge outcome;

(iii) the teaching methods and any instructional media to be utilized;

(iv) a breakdown of the curriculum into clock hours of instruction.

(D) A sample training completion certificate;

(E) Education and experience requirements for training instructors.

(d) **Requirements for administration of the examination.** An entity which desires to sponsor an examination shall file an application for approval on the forms prescribed by the Department.

(1) The examination shall be administered and evaluated only by a Department approved entity which may be periodically monitored by the Department.

(2) Each examination entity must provide the Department with the following:

(A) Name and address for the entity sponsoring the examination and for the contact person for the program;

(B) The location of the administrative office of the program and the location where records are maintained;

(C) Written job analysis studies to determine the pool of test questions;

(D) Test question validation studies;

(E) Assurances of how the examination process will be secured from tampering and compromise.

(3) Each examination entity shall provide the examinee with the following:

(A) The notice showing pass/fail results;

(B) The notice shall specify the areas of failure.

(4) The Department may withdraw approval of a testing entity when it allows one or more of the following:

(A) Disclosure of the examination;

(B) Allowing another entity not approved by the Department to score the examination;

(C) Tampering with the examination;

(D) The examination was administered by a non-qualified individual.

(5) The trainee may sit for the examination at a different location than where training was completed if the testing entity is provided with a training completion certificate from the training entity.

(e) **Content of the examination.** The competency examination shall:

(1) Address each requirement specified in the minimum curriculum for the standards in this Chapter, as prescribed by the Department;

(2) Be developed from a pool of test questions, only a portion of which is used in any one (1) examination;

(3) Use a system that prevents disclosure of both the pool of test questions and the individual examination results.

(f) **Successful completion of the examination.** An individual shall score at least seventy (70) percent on the examination for a passing score.

(g) **Failure to complete the competency examination.** If an individual does not complete the competency examination successfully, the individual shall be notified by the testing entity of, at least, the following:

(1) The areas which the individual did not pass;

(2) That the individual may retest as necessary for a period of up to one year.

310:670-5-11. Physical plant

(a) **Existing facilities.**

(1) The reception and release area shall be located inside the security perimeter, but outside the ~~prisoner~~ inmate living ~~quarters~~area. There shall be a secure weapons storage area outside of the custody perimeter.

(2) All cells and living areas shall have at least forty (40) square feet of floor space for the initial ~~prisoner~~ inmate and at least twenty (20) square feet of floor space for each additional ~~prisoner~~ inmate occupying the same cell. Double-celling of ~~prisoners~~ inmates is permitted if there is at least sixty (60) square feet of floor space for two (2) persons.

(3) The facility shall have at least one (1) special purpose cell to provide for the temporary detention of ~~prisoners~~ inmates under the influence of alcohol or dangerous substances or for persons who are uncontrollably violent or self-destructive. These cells shall be designed to prevent injury.

(4) The housing and activity areas shall provide, at least the following:

(A) Lighting of at least twenty (20) foot candles;

(B) One (1) toilet and one (1) washbasin, with hot and cold running water, in every cell or dormitory at a ratio of at least one (1) toilet and one (1) washbasin to twenty (20) ~~prisoners~~ inmates; and

(C) A shower with non-skid floors and with hot and cold running water, at a ratio of at least one (1) shower to twenty (20) ~~prisoners~~ inmates in the housing areas.

(5) There shall be sufficient floor drains to ensure a sanitary facility.

(6) There shall be designated and marked emergency evacuation exits that comply with the ~~Fire Safety Code~~ requirements of the Oklahoma State Fire Marshal and which ~~permits~~permit prompt evacuation of ~~prisoners~~ inmates and staff in an emergency.

(7) A county may provide a dormitory-style ~~jail~~detention facility to accommodate up to medium-security ~~prisoners~~ inmates. It shall be equipped with washbasins, toilets and showers with hot and cold running water at a ratio of at least one (1) washbasin, one (1) toilet and one (1) shower to twenty (20) ~~prisoners~~ inmates. A dormitory-style ~~jail~~detention facility shall meet all requirements for a ~~jail~~detention facility.

(b) **New facilities and substantial remodeling of facilities (after January 1, 1992).** Plans for the construction of a new facility or the substantial remodeling of an existing facility shall be submitted to the Department for review and approval. Detention facilities are encouraged to submit plans to the Department for any re-modeling or repair that does not meet the substantial remodeling threshold to ensure standards are met.

(1) A new ~~jail~~detention facility shall be geographically accessible to criminal justice and community agencies.

(2) The reception and release area shall be located inside the security perimeter but outside ~~prisoner~~ inmate living ~~quarters~~area. The reception and release area shall have the following components:

(A) Sally port;

(B) Secure weapons storage, outside the ~~jail~~detention facility custody perimeter;

(C) Temporary holding rooms with adequate seating for its rated capacity, toilets and washbasins;

(D) Booking area;

(E) Medical examination room;

(F) Shower facilities;

(G) Secure area for ~~prisoner~~ inmate personal property storage;

(H) Telephone access;

(I) Interview room; and

(J) General administration space.

(3) Cells shall be constructed and arranged to allow direct natural light into each area where feasible.

(4) Windows installed after January 1, 2018, shall conform to ACA standards as adopted in 2017.

(5) All areas shall provide for at least twenty (20) foot candles of light.

(6) Each cell and detention room shall have at least forty (40) square feet of floor space for the initial ~~prisoner~~ inmate, and at least twenty (20) square feet of floor space for each additional ~~prisoner~~ inmate occupying the same cell. Double-celling is permitted if there is at least sixty (60) square feet of floor space for two (2) persons. Each room or cell shall have:

(A) One (1) toilet and one (1) washbasin with hot and cold running water, for every single or double occupancy cell or dormitory at a ratio of at least one (1) toilet and one (1) washbasin to twenty (20) ~~prisoners~~ inmates.

(B) Bunks and storage as indicated by square feet.

(7) A county may provide a dormitory-style ~~jail~~detention facility to accommodate minimum security ~~prisoners~~ inmates. A dormitory-style ~~jail~~detention facility shall be equipped with washbasins, toilets and showers with hot and cold running water at a ratio of at least one (1) washbasin, one (1) toilet and one (1) shower to twenty (20) ~~prisoners~~ inmates. A dormitory-style ~~jail~~detention facility shall meet all requirements for ~~jail~~detention facilities.

(8) There shall be a dayroom area for each living unit containing at least thirty-five (35) square feet of floor space per ~~prisoner~~ inmate for the maximum number of ~~prisoners~~ inmates who use the dayroom at one time. It shall be separate and distinct from the sleeping area but immediately adjacent and accessible.

(9) Living areas shall be planned and organized to permit segregation of ~~prisoners~~ inmates according to existing laws, and the facility's classification plan.

(10) Each facility shall have at least one (1) special purpose cell or room to provide for the temporary detention of persons under the influence of alcohol or dangerous substances, or for persons who are uncontrollably violent or self-destructive. Such cells shall be designed and located to prevent injury to confined persons.

(11) There shall be showers with hot and cold running water at a ratio of at least one (1) shower to twenty (20) ~~prisoners~~ inmates in the housing areas.

(12) There shall be ~~sufficient~~ floor drains maintained in working order~~to ensure a sanitary facility~~.

(13) If the facility maintains an arsenal it shall be located outside the ~~prisoner~~ inmate area accessible only to authorized persons for secure storage, care and issuance of weapons, firearms, ammunition, chemical agents and other related security equipment.

(14) Space shall be provided for the secure storage of items ~~a prisoner~~ an inmate has in his possession at the time of booking.

(15) Space shall be provided for administrative, professional and clerical staff, including conference rooms, storage room for records, public lobby and toilet facilities.

(16) There shall be designated and marked emergency exits that comply with the ~~Fire Safety Code~~requirements of the Oklahoma State Fire Marshal and which ~~permits~~permit prompt evacuation.

(17) In areas not specifically covered by these standards, new buildings and buildings undergoing ~~extensive~~ substantial remodeling shall generally meet requirements of the ~~state-adopted building code and National Fire Protection Association, Life Safety Code (current edition)~~ State Fire Marshal and the plans shall be approved by the State Fire Marshal.

(c) **Temporary tent ~~jails~~detention facilities.** The Department must approve the establishment and design of this type of facility. The State Fire Marshal must approve it. A county may erect a tent ~~jail~~detention facility which is temporary in nature, to meet the needs of the county for confining minimum-security ~~prisoners~~ inmates. A tent ~~jail~~detention facility shall not detain juveniles and shall maintain continuous, physical and architectural separation of male and female ~~prisoners~~ inmates. A tent ~~jail~~detention facility shall not be required to meet minimum requirements for a ~~jail~~detention facility but shall provide at least the following:

(1) **Accommodations.**

(A) Basic daily living needs;

(B) Medical needs;

(C) Shelter from inclement weather;

(D) Freedom from obvious safety hazards;

(E) Fire extinguishers as recommended by the Oklahoma State Fire Marshal; and

(F) General comfort consistent with security and control of ~~prisoners~~ inmates.

(2) **Security.**

(A) Tents erected inside a fenced area suitable for guarding and controlling ~~prisoners~~ inmates; and

(B) Permit ~~prisoners~~ inmates to have visitors consistent with security requirements.

SUBCHAPTER 7. STANDARDS FOR ~~JAILS~~DETENTION FACILITIES HOLDING JUVENILES

310:670-7-1. Standards for ~~jails~~detention facilities holding juvenile offenders

(a) A juvenile shall be incarcerated only in a city or county detention facility~~or city~~ authorized by the ~~Oklahoma State Department of Health~~ appropriate judicial or juvenile bureau authority. A juvenile shall not be detained in any holding facility or lockup facility. This requirement does not preclude juveniles being held in non-secure areas until a parent or other responsible party arrives to take custody of the juvenile.

(b) Prior to a juvenile being placed in an eligible ~~jail~~detention facility, permission shall be obtained from the appropriate judicial or juvenile bureau authority. A record of permission shall be maintained at the facility.

(c) Sight checks of juvenile ~~prisoner~~ inmate living areas shall be performed at least one (1) time each hour. The check shall include all areas of each cell and the ~~prisoners~~ inmates shall be visually observed. Checks shall be documented in writing on a form provided by the administrator.

(d) An adult ~~prisoner~~ inmate who is assigned trusty status shall not be permitted ~~visual~~sustained contact with a juvenile ~~prisoner~~ inmate. A staff member shall serve a juvenile ~~prisoner's~~ inmate's meals.

(e) In addition to existing visitation privileges, juvenile ~~prisoners~~ inmates shall be permitted visits from authorized juvenile agency personnel. Visits from family members, who are unable to visit during normal visiting hours shall be allowed so long as arrangements for them are made in advance, with the administrator, and provided they do not jeopardize security. Each facility that holds a juvenile shall have written policies and procedures for such visits.

(f) A juvenile ~~prisoner~~ inmate shall be able to communicate with staff members at all times. This can be either by voice or electronic means. If electronic systems are used, there shall be a backup plan to insure communication ability is maintained.

(g) No staff member shall be permitted to enter a juvenile ~~prisoner~~ inmate living area i.e., past the last locked door, without backup assistance being available from another staff member. At least one (1) staff member shall be of the same sex as the juvenile ~~prisoner~~ inmate except in life endangering situations. ~~Life endangering situations are defined as a suicide attempt, obvious injury or illness, which in the opinion of staff, requires immediate attention.~~ Anytime a decision is made to enter the living area without appropriate backup assistance as defined above, the action shall be documented. Documentation shall show the reason for the decision and a permanent record shall be maintained.

(h) A juvenile charged with a crime which would constitute a felony if committed by an adult, or a juvenile who is an escapee from a juvenile training school or from a Department of Human Services group home, may be detained in any ~~certified jail~~detention facility authorized by the appropriate judicial or juvenile bureau authority, police station or similar law enforcement office, not approved for long-term detention, for a period of six (6) hours or less for identifying, processing or arranging for transfer to a juvenile detention facility or alternative program. In no other circumstances shall a juvenile be securely detained in an adult ~~jail~~detention facility.

310:670-7-2. Certification of detention facilities holding juvenile offenders

(a) The Department will coordinate with the Office of Juvenile Affairs to certify detention facilities for holding juvenile offenders based on a facility's compliance with the rules in this Subchapter [10A O.S. § 2-3-103(E)].

(b) The designation of a detention facility as a place for the detention of juveniles is made from a list of eligible facilities supplied by the Department of Health. Eligible facilities are those facilities deemed by the Department as compliant with the applicable standards of this Chapter.

310:670-7-3. Recording and reporting the use of detention facilities to hold juvenile offenders

(a) Any adult jail, lockup or other adult facility shall record and report, in a manner consistent with requirements of the Office of Juvenile Affairs, the detention of any person under the age of eighteen (18) [10A O.S. § 2-3-103(F)].

(b) Records of detention for persons under the age eighteen (18) and detained in the last year shall be subject to review during the Department's annual inspection.

[OAR Docket #19-677; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

[OAR Docket #19-678]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
310:675-1-2. Definitions [AMENDED]
Subchapter 3. Licenses
310:675-3-1.1. Application for licensure [AMENDED]
Subchapter 5. Physical Plant
310:675-5-1. Application [AMENDED]
310:675-5-18. Design and construction [AMENDED]
310:675-5-20. Mechanical requirements [AMENDED]
310:675-5-21. Electrical requirements [AMENDED]
310:675-5-24. Preparation of plans and specifications [AMENDED]
Subchapter 9. Resident Care Services
310:675-9-5.1. Assessment and care plans [AMENDED]
Subchapter 11. Intermediate Care Facilities of 16 Beds and Less for Individuals with Intellectual Disabilities (ICF/IID - 16)
310:675-11-1. Scope [AMENDED]
310:675-11-2. Active Treatment [AMENDED]
310:675-11-3. Qualified ~~mental retardation~~intellectual disability professional [AMENDED]
310:675-11-4. Occupancy [AMENDED]
310:675-11-5. Physical plant [AMENDED]
310:675-11-6. Institutional and operational relationships [AMENDED]
310:675-11-7. Staffing [AMENDED]
310:675-11-8. Administration [AMENDED]
310:675-11-9. Resident care services [AMENDED]
Subchapter 13. Staff Requirements
310:675-13-12. Direct care staffing [AMENDED]
310:675-13-14. Flexible staff-scheduling [AMENDED]

AUTHORITY:
Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 25 O.S. § 40; 63 O.S. 1-1942

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019

COMMENT PERIOD:
February 15, 2019 through March 21, 2019

PUBLIC HEARING:
March 19, 2019

ADOPTION:
March 19, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 13, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:

This action will amend numerous sections within this chapter. The current Rule uses the terms "Mental Retardation", "Mentally Retarded" and "Qualified Mental Retardation Professional". These terms are outdated and may be considered disrespectful. This proposal replaces the aforementioned terms with "Individuals with Intellectual Disabilities", "Individuals with Developmental Disabilities", or "Qualified Intellectual Disability Professional". Pursuant to Title 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

An amendment is provided at 310:675-5-1, to update the incorporation by reference from the National Bureau of Standards Fire Safety Evaluation System to the National Fire Protection Association's NFPA 101A Guide on Alternative Approaches to Life Safety, 2010 Edition. This update addresses the latest standards used by architect's and the Centers for Medicare and Medicaid Services (CMS).

An amendment is provided at 310:675-5-18 to explicitly identify the applicable portions of the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition that applies to design and construction requirements. This revision aids architects so that they can design based on the requirements applied by the CMS.

At 310:675-5-20 an incorporation by reference is inserted to address a secondary incorporation by reference that was present in the NFPA99, 2012 Edition. The heating and ventilating systems standards at the American Society of Heating, Refrigerating and Air-Conditioning Engineers, ASHRAE 170, 2008 Edition, are referenced by NFPA99, 2012 Edition. They are now explicitly incorporated by reference. At 310:675-5-21, the incorporation by reference for emergency electric service is updated from the 1977 NFPA standard to the 2012 NFPA standard. By updating the references to NFPA 99 and ASHRAE we avoid facilities designed to meet state requirements but that do not meet CMS requirements.

A scrivener's error omitted the removal of a reference to the old life safety code in 310:675-11-5. This section was amended in 2017 to incorporate the 2012 edition of the Life Safety Code adopted by the Centers for Medicare & Medicaid Services. The amendment to this section addresses this omission by striking the old reference and supporting language applicable to the former code.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

310:675-1-2. Definitions

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

"Act" means Title 63 of the Oklahoma Statutes, Sections 1-1901 and following as amended also known as the Nursing Home Care Act.

"Allied health professional" means one of the following persons: physician assistant, physical, speech, or occupational therapist, occupational therapy assistant, physical therapy assistant, or qualified social worker.

"Attendant" means the person having control of an animal/pet visiting or in residence in a facility.

"Approval" means the mandatory state government process by which an agency or program is reviewed, and publicly proclaimed, to render a service worthy of note.

"CEP" means the nurse aide competency evaluation program.

"Certification" means the process by which a non-governmental agency, or association, or governmental agency attests that an individual or facility has met certain predetermined standards specified by the certifying body.

"Certified medication aide" means a person who has passed a Department approved program for administering medications.

"Certified nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents of a facility, who is not a licensed health professional and has completed a Department approved training and competency program.

"Charge nurse" means a registered nurse or licensed practical nurse responsible for supervising nursing services on a specific shift.

"Chemical restraints" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms.

"Consultant registered nurse" means a registered nurse who provides consultation to the director of nursing and administrator concerning the delivery of nursing care for all residents in the facility.

"Denial" means a decision made by the appropriate body to disapprove an application.

"Direct care staff" means nursing, activity, social and therapy staff.

"Director of nursing" means either a registered nurse or licensed practical nurse, who has the authority and responsibility to administer nursing services within the facility.

"Emergency" means, for the purposes of Title 63 O.S. Section 1-1912, a serious, potentially life-threatening or life-endangering situation in which immediate action is necessary to ensure the health, safety, or welfare of residents, and for which the facility:

(A) does not have a plan acceptable to the Department to ensure health, safety or welfare of residents; or

(B) refuses to remedy the situation.

"Health related services" means any medically directed service provided by any person in a facility that may include but is not limited to, the following:

(A) Positioning and turning of residents.
(B) Self-help skill training.
(C) Assistance with prosthetic/assistive devices.
(D) Medication administration.
(E) Nutrition and hydration.
(F) Monitoring of resident vital signs.
(G) Catheter and nasogastric care.
(H) Behavior modification programs.
(I) Administering a medically related care plan
(J) Restorative services.

"In charge" and **"supervision"** means the administrator must have the requisite authorization from the licensee to make those purchases and incur those necessarily attendant debts in order to comply with the rules promulgated by the Board and all pertinent state statutes.

"Inservice education" means activities intended to assist the individual to acquire, maintain, and/or increase competence in fulfilling the assigned responsibilities specific to the employer's expectations.

"Licensed health professional" means one of the following: a physician; dentist, podiatrist, chiropractor, physician assistant, nurse practitioner; pharmacist; physical, speech, or occupational therapist; registered nurse, licensed practical nurse; licensed or certified social worker; or licensed/registered dietician.

"Licensed nurse" means a registered nurse or a licensed practical nurse who is currently licensed by the Oklahoma Board of Nursing.

"Licensed pharmacist" means a person who is a graduate of an accredited pharmacy program and is currently licensed by the Oklahoma Board of Pharmacy.

"Licensed practical nurse" means a person who is a graduate of a state approved practical nursing education program, or who meets other qualifications established by the Oklahoma Board of Nursing, and is currently licensed by the Oklahoma Board of Nursing.

"Licensure" means the process by which the Department grants to persons or entities the right to establish, operate, or maintain any facility.

"Local law enforcement" means:

(A) The municipal police department, if the facility is within the jurisdiction of any municipality of this state, or

(B) The county sheriff, if the facility is outside the jurisdiction of any municipality within this state.

"Manager" or **"supervisor"** means the person or entity which performs administrative services for the licensee. The manager or supervisor is not legally responsible for the decisions and liabilities of the licensee, and does not stand to gain or lose financially as a result of the operation of the facility. The manager is paid a fee or salary for services, and the primary remuneration shall not be based upon the financial performance of the facility.

"Misappropriation of resident's property" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident, without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Nurse aide" means any person providing nursing or nursing related services to residents in a facility, but does not include an individual who is a licensed health professional, or who volunteers to provide such services without monetary compensation.

"Nurse aide trainee" means any person who has been employed by a facility to provide nursing care or health related services, and is enrolled in but has not completed a Department approved training and competency program.

"Orientation" means the training for a particular job activity given to all employees.

"Perishables" means food supplies, to include dietary supplements and intravenous feedings, medical supplies, and medications.

"Physical restraints" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Registered/licensed dietitian" means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Registered nurse" means a person who is a graduate of a state approved registered nursing education program, and who is currently licensed by the Oklahoma Board of Nursing.

"Registry" means a Department maintained list of individuals who have successfully completed a nurse aide training and competency evaluation program, or a competency evaluation program, approved by the Department.

"Revoke" means to rescind approval of a previous action.

"Specialized facility"~~means any facility which offers or provides inpatient long-term care services on a twenty four hour basis to a limited category of persons requiring such services, including, but not limited to, a facility providing health or habilitation services for developmentally disabled persons~~*means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for* [individuals with intellectual or developmental disabilities] [63:1-1902(11)], infants and/or children, or individuals with Alzheimer's ~~and~~or dementia~~residents~~.

"Standards of nursing practice" means an authoritative statement that describes a level of care or performance common to the profession of nursing by which the quality of nursing practice can be judged. Standards of nursing practice include both standards of care and standards of professional performance.

"Standards of care" means a description of a competent level of care demonstrated by a process of accurate assessment and diagnosis, planning, appropriate interventions, and predicted patient outcomes. (Appendix B of this Chapter.)

"Standards of professional performance" means a description of a competent level of behavior in the professional role including activities related to quality assurance, education, consultation, research, ethics, resource utilization, accountability, peer review, and interdisciplinary collaboration.

"Suspended license" means a license that is issued for a period not to exceed three years to a facility which has temporarily closed or ceased operations.

"Training and competency evaluation program" means a program approved by the Department to instruct and evaluate individuals to act as nurse aides.

"Transfer" means the move of a resident from one facility to another facility.

"Intra-facility transfer" means the moving of a resident from one room to another within a facility.

"Transfer of ownership" means a change of substantial, or controlling interest, in the ownership of a facility. A change of less than five percent (5%) of the interest of the owner does not constitute a transfer of ownership unless it also results in a change of control of the owner.

"Willful violation" means:

(A) a pattern of violation of the direct-care staffing requirement;

(B) a violation of the direct-care staffing requirement in which the facility knew or should have known staffing would be insufficient to meet the requirement yet took no action to avert the violation; or

(C) the reporting of materially inaccurate or misleading information of direct-care staffing to the Health Care Authority.

SUBCHAPTER 3. LICENSES

310:675-3-1.1. Application for licensure

(a) No person or entity shall operate a facility without first obtaining a license.

(b) The applicant shall file a licensure application in a timely manner, on the forms provided by the Department, with a check for the filing fee payable to the Oklahoma State Department of Health. The filing fee is set by statute, and currently is calculated as Ten Dollars ($10.00) per licensed bed.

(c) The facility owner shall be the applicant for the license, unless a receiver has been appointed. If there is a receiver, the receiver shall be the applicant.

(d) If the facility is leased, then the person or entity to whom the facility is leased shall be the applicant. If the lessee does not assume all rights to the facility and the lessor reserves some participatory rights in the operation of the facility, then both entities shall make joint application for the license.

(e) The applicant for license shall disclose the name, address, and tax identification number of a person or entity who has the legal duties of filing employment tax returns and paying employment taxes with respect to staff required to meet the needs of facility residents, including but not limited to administrators, nurses, nurse aides, certified medication aides, dieticians, nutritionists, food service staff, qualified~~ mental retardation~~ intellectual disability professional, and activities, social services, maintenance and housekeeping personnel.

(f) An application is not considered to be filed unless it is accompanied by the application fee. The application fee, however, shall not be required from a receiver or temporary manager appointed by, or at the request of, the Department.

SUBCHAPTER 5. PHYSICAL PLANT

310:675-5-1. Application

(a) The requirements of this Subchapter shall be applicable to all new construction of, or modification to, long-term care facilities~~constructed after the effective date of these regulations. Licensed facilities in operation on the effective date of these regulations shall continue to comply with the construction and safety regulations applicable to the issuance of their 1980 license~~.

(b) In the determination of compliance with fire safety regulations, the State Fire Marshal and the Department may utilize a system of value equivalents, such as the ~~National Bureau of Standards Fire Safety Evaluation System~~NFPA 101A Guide on Alternative Approaches to Life Safety, 2010 Edition, which provides alternative methods for achieving compliance with the regulations.

310:675-5-18. Design and construction

The requirements in applicable portions of the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition and 2012 Life Safety Code Tentative Interim Amendments (TIA) 12-1, 12-2, 12-3, and 12-4; and NFPA 99 Health Care Facility Code (HCFC), 2012 edition, excluding chapters 7, 8, 12 and 13, and 2012 HCFC TIA 12-2, 12-3, 12-4, 12-5 and 12-6, adopted in 81 Federal Register 26871 by the Centers for Medicare ~~&~~and Medicaid Services on July 5, 2016, are incorporated by reference. For Medicare or Medicaid certified nursing or specialized facilities, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter. A high degree of safety for the occupants shall be provided to minimize the incidence of accidents with special consideration for residents who will be ambulatory to assist them in self care. Hazards such as sharp corners shall be avoided.

(1) **Existing facilities.** Nonconforming portions which because of financial hardship are not being totally modernized, shall comply with ~~the safety requirements dealing with details and finishes as listed in Chapter 13 NFPA Standard 1-1, 1981~~ NFPA 101, 2012 Edition, Chapters 19 or 43.

(2) **New construction projects including additions and alterations.** Details and finishes shall comply with the following:

(A) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.

(B) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, shall be equipped with doors and hardware which will permit access from the outside in any emergency. When such rooms have only one opening or are small, the doors shall be capable of opening outward or be otherwise designed to be opened without need to push against a resident who may have collapsed within the room.

(C) The minimum width of all doors to resident rooms and rooms needing access for beds shall be 3'8" (1.12 m.). Doors to rooms needing access for stretchers and to resident's toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of 2'10" (86.3 cm.).

(D) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type. Openings to showers, baths, resident's toilets, and other small wet type areas not subject to fire hazard are exempt from this requirement.

(E) Windows and outer doors which may be frequently left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open.

(F) Resident rooms intended for occupancy of 24 hours or more shall have windows operable without the use of tools and shall have sills not more than 3'0" (91 cm.) above the floor. Windows in buildings designed with an engineered smoke control system in accordance with NFPA 90A are not required to be operable. However, attention is called to the fact that natural ventilation possible with operable windows may in some areas permit a reduction in energy requirements.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not

swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. (Large walk-in type closets are considered as occupiable spaces.)

(H) Safety glazing shall be of materials and at locations required by the Oklahoma Safety Glazing Material Law.

(I) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts and shall be constructed to restrict the passage of smoke.

(J) Grab bars shall be provided at all residents' toilets, showers, tubs, and sitz baths. The bar shall have 1 1/2" (3.8 cm.) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 lbs. (113.4 kg.).

(K) Recessed soap dishes shall be provided in showers and bathrooms.

(L) Handrails shall be provided on both sides of corridors used by residents. A clear distance of 1 1/2" (3.8 cm.) shall be provided between the handrail and the wall. Ends of handrails and grab bars shall be constructed to prevent snagging the clothes of residents.

(M) Location and arrangement of handwashing facilities shall permit their proper use and operation.

(N) Lavatories and handwashing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 lbs. (113.4 kg.) on the front of the fixture.

(O) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position. Mirrors shall not be installed at handwashing fixtures in food preparation areas.

(P) Provisions for hand drying shall be included at all handwashing facilities. These shall be single-use separate, individual paper or cloth units enclosed in such a way as to provide protection against the dust or soil and ensure single unit dispensing. Hot air dryers are permitted provided that installation is such to preclude possible contamination by recirculation of air.

(Q) The minimum ceiling height shall be 8'0" (2.44 m.) with the following exceptions:

(i) Boiler rooms shall have ceiling clearances not less than 2'6" (76 cm.) above the main boiler header and connecting piping.

(ii) Rooms containing ceiling-mounted equipment shall have height required to accommodate the equipment.

(iii) Ceilings in corridors, storage rooms, toilet rooms, and other minor rooms shall be not less than 7'8" (2.34 m.).

(iv) Suspended tracks, rails and pipes located in path of normal traffic shall not be less than 6'8" (2.03 m.) above the floor.

(R) Recreation rooms, exercise rooms, and similar spaces where impact noise may be generated shall not be located directly over resident bed areas unless special provisions are made to minimize such noise.

(S) Rooms containing heat producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature 10° F. (6° C.) above the ambient room temperature.

(3) **Finishes.**

(A) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a non-slip surface.

(B) Wall bases in kitchens, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be made integral and covered with the floor, tightly sealed within the wall, and constructed without voids that can harbor insects.

(C) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant. Finish trim, and wall and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(D) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(E) Ceilings throughout shall be easily cleanable. Ceilings in the dietary and food preparation areas shall have a finished ceiling covering all overhead piping and duct work. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

310:675-5-20. Mechanical requirements

(a) **Steam and hot water systems.**

(1) Boilers shall have the capacity, based upon the net ratings published by Hydronics Institute, to supply the normal requirements of all systems and equipment. The number and arrangement of boilers shall be such that when one boiler breaks down or routine maintenance requires that one boiler be temporarily taken out of service, the capacity of the remaining boiler(s) shall be at least 70% of the total required capacity, except that in areas with a design temperature of 20 ° F. (-7 ° C.) or more, based on the Median of Extremes in the American Society of Heating, Refrigerating and Air-Conditioning Engineers~~ASHRAI~~ (ASHRAE) Handbook of Fundamentals, the remaining boiler(s) do not have to include boiler capacity for space heaters.

(2) Boiler feed pumps, heating circulating pumps, condensate return pumps, and fuel oil pumps shall be connected and installed to provide normal and standby service.

(3) Supply and return mains and risers of cooling, heating and process systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends, except that vacuum condensate return need not be valved at each piece of equipment.

(b) **Heating and ventilating systems.**

(1) ~~**Temperatures.** For all areas occupied by residents, the indoor winter design temperature shall be 75° F. (24° C.). For all other occupied areas, the indoor winter design temperature shall be 72° F. (22° C.). (NOTE: This does not preclude operation at lower temperatures where appropriate and resident safety is not affected. This requirement is for "capacity".) The indoor summer design temperature shall be 80° F. (27° C.) for all areas occupied by residents~~**Design.** The design of heating and ventilating systems shall comply with the requirements of ASHRAE 170, 2008 Edition, as referenced by NFPA99, 2012 Edition.

(2) **Ventilation system details.** All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system.

(A) Outdoor air intakes shall be located as far as practical but not less than 25' 0" (7.62 m.) from exhaust outlets or ventilating systems, combustion equipment stacks, medical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular exhaust and other noxious fumes (plumbing and vacuum vents that terminate above the level of the top of the air intakes may be located as close as 10' 0" (3.05 m.)). The bottom of outdoor air intakes serving central systems shall be located as high as practical but not less than 6' 0" (1.83 m.) above ground level, or if installed above the roof, 3' 0" (91 cm.) above roof level.

(B) The bottoms of ventilation openings shall not be less than 3" (7.6 cm.) above the floor of any room.

(C) All central ventilation or air conditioning systems shall be equipped with filters. the filter bed shall be located upstream of the air conditioning equipment, unless a prefilter is employed. In this case, the prefilter shall be upstream of the equipment and the main filter bed may be located further downstream.

(D) Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage.

(c) **Plumbing and other piping systems.** These systems shall be designed and installed in accordance with the requirements of PHCC National Standard Plumbing Code, Chapter 14, "Medical Care Facility Plumbing Equipment."

(d) **Plumbing fixtures.** The material used for plumbing fixtures shall be of non-absorptive acid resistant material.

(1) The water supply spout for lavatories and sinks required in resident care areas of skilled nursing facilities only shall be mounted so that its discharge point is a minimum distance of 5" (12.7 cm.) above the rim of the fixture. In all facilities all fixtures used by medical and nursing staff, and all lavatories used by residents and food handlers shall be trimmed with valves which can be operated without the use of hands (single lever devices may be used subject to the above). Where blade handles are used for this purpose, they shall not exceed 4 1/2" (11.4 cm.) in length, except that handles on clinical sinks shall be not less than 6" (15.2 cm.) long.

(2) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(3) Shower bases and tubs shall provide non-slip surfaces for standing residents.

(e) **Water supply systems.**

(1) Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

(2) Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(3) Backflow preventers (vacuum breakers) shall be installed on hose bibbs, janitors' sinks, bedpan flushing attachments, and on all other fixtures to which hoses or tubing can be attached.

(4) Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(f) **Hot water heaters and tanks.**

(1) The hot water heating equipment shall have sufficient capacity to supply water at the temperature and amounts indicated. (See Appendix A). Water temperatures to be taken at hot water points of use or inlet to processing equipment.

(2) Storage tank(s) shall be fabricated of corrosion-resistant metal lined with non-corrosive material.

(g) **Drainage systems.**

(1) Insofar as possible, drainage piping shall not be installed within the ceiling nor installed in an exposed location in food preparation centers, food serving facilities, food storage areas, and other critical areas. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

(2) Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and State regulations.

(h) **Identification.** All piping in the HVAC service water systems shall be color coded or otherwise marked for easy identification.

310:675-5-21. Electrical requirements

All material including equipment, conductors, control, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with available standards of Underwriter's Laboratories, Inc., or other similarly established standards. All electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified.

(1) **Panelboards.** Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits they serve. This requirement does not apply to emergency system circuits.

(2) **Lighting.** All spaces occupied by people, machinery, equipment within buildings, approaches to buildings, and parking lots shall have lighting.

(A) Residents' rooms shall have general lighting and night lighting. A reading light shall be provided for each resident. Flexible light arms shall be mechanically controlled to prevent the bulb from coming in contact with bed linen. At least one light fixture for night lighting shall be switched at the entrance to each resident room. All switches for control of lighting in resident areas shall be of quiet operating type.

(B) Nursing unit corridors shall have general illumination with provisions for reduction of light level at night.

(3) **Receptacles (convenience outlets).**

(A) Resident room shall have duplex grounding type receptacles as follows: One location each side of the head of each bed, one for television if used, and one on another wall.

(B) Duplex grounding receptacles for general use shall be installed in all corridors approximately 50'0" (15.24 m.) apart and within 25'0" (7.62 m.) of ends of corridors.

(4) **Notification system.**

(A) **Resident areas.** Each room, toilet and bathing area shall have a means for residents to directly contact nursing staff. This communication may be through audible or visual signs, electronic systems and may include "wireless systems."

(B) **Wireless nurse call system.** Facilities may substitute a wireless nurse call system for wired call systems or operate both a wireless and a wired nurse call system in parallel.

(C) **Resident's emergency.** A nurse's call emergency button shall be provided for resident's use at each resident's toilet, bath, and shower room. Such button shall be usable by a collapsed resident lying on the floor (inclusion of a pull cord will satisfy this item.)

(5) **Emergency electric service.** Emergency electric service shall be provided in accordance with ~~NFPA 76-A, 1977, Chapter 05, Essential Electrical Systems for Nursing Homes, etc.~~NFPA 99, 2012 Edition.

310:675-5-24. Preparation of plans and specifications

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A nursing facility has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents. After the first review and before Department approval of stage one plans, the nursing facility at its own risk may choose to make a stage two submittal; a nursing facility electing this option would not be eligible for the fast track process.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The nursing facility has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(i) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

(iii) All mechanical, electrical, and plumbing plans and specifications.

(iv) Equipment and furnishings.

(2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of residents, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(c) **Reserved.**

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-5.1. Assessment and care plans

(a) A resident assessment and an individual care plan shall be completed and implemented for each resident. The care plan shall indicate the resident's current status and accurately identify the resident's needs.

(b) The written resident assessment and care plan shall be reviewed and updated, at least quarterly, and as needed when the resident's condition indicates.

(c) Efforts shall be made to include the resident and resident's representative in development and implementation of the care planning process.

(1) **Resident assessment.**

(A) The facility shall conduct, initially and periodically, a comprehensive, accurate, standardized, reproducible assessment for each resident's functional capacity.

(B) Each resident shall have an assessment coordinated or conducted by a registered nurse.

(C) Each individual completing a portion of the assessment shall sign, date, and certify the accuracy of that portion.

(D) An assessment shall be completed within fourteen days after admission of the resident.

(E) The resident assessment shall include a minimum data set (MDS) in the form required under 42 CFR 483.20. Each facility, with the exception of Intermediate Care Facilities for ~~the Mentally Retarded (ICF/MR)~~ Individuals with Intellectual Disabilities (ICF/IID), accurately shall complete the MDS for each resident in the facility, regardless of age, diagnosis, length of stay or payment category.

(F) The MDS form shall require the following, as applicable:

(i) Admission assessment;

(ii) Annual assessment;

(iii) Significant change in status assessment;

(iv) Significant correction of prior full assessment;

(v) Significant correction of prior quarterly assessment;

(vi) Quarterly review; and

(vii) A subset of items upon a resident's transfer, reentry, discharge, and death.

(2) **Resident pain assessment.**

(A) Residents shall be screened for the presence of pain at least once every 30 days and whenever vital signs are taken.

(i) Licensed nursing staff shall perform the screening at least once every 30 days. Certified nurse aides may perform the screening more frequently as needed.

(ii) The screening instrument shall grade the intensity and severity of pain using a resident-specific pain scale;

(B) An individualized pain assessment shall be conducted by a registered nurse for each resident:

(i) In conjunction with the admission, quarterly and annual assessments required at OAC 310:675-9-5.1.(c)(1)(F); and

(ii) With onset of pain not previously addressed in a care plan or physician's orders.

(C) The goal is to alleviate or minimize pain while assisting the resident to maintain as high a level of functioning as possible. The pain assessment shall include, but not be limited to:

(i) A statement of how the resident describes the pain;

(ii) Intensity and severity of pain graded using a resident-specific pain scale;

(iii) Recent changes in pain;

(iv) Location(s);

(v) Onset and duration of pain, such as new pain within the last 3 days, recent pain within the last 3 months, or more distant pain greater than 3 months;

(vi) Type of pain reported or represented by resident, such as constant or intermittent, and duration or frequency of pain;

(vii) Current pain measured at its least and greatest levels;

(viii) Aggravating and relieving factors;

(ix) Treatment including a review of all therapies, including medication, and the regimen used to minimize pain;

(x) Effects of pain and effectiveness of therapy on physical and social functions;

(xi) Resident's treatment preferences and emotional responses to pain, including resident's expectations and how resident coped with pain; and

(xii) If applicable, refer to pain assessment tool for the cognitively impaired.

(D) Results shall be recorded in the resident's clinical record showing changes in pain scale and changes in level of functioning. The physician shall be contacted as necessary.

(E) Pain shall be treated promptly, effectively and for as long as necessary.

(3) **Individual care plan.**

(A) An individual care plan shall be developed and implemented for each resident to reflect the resident's needs.

(B) The care plan shall be developed by an interdisciplinary team that includes a registered nurse with responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs.

(C) The care plan shall include measurable objectives and timetables to meet the resident's medical, nursing, mental and psychosocial needs identified in the assessment.

(D) The care plan shall be available to appropriate personnel providing care for the resident.

(E) An initial care plan shall be completed at the time of admission. The individualized care plan shall be completed within twenty-one days after admission.
(F) A care plan shall be completed within seven calendar days after the completion of the assessment.

SUBCHAPTER 11. INTERMEDIATE CARE FACILITIES OF 16 BEDS AND LESS FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES (ICF/IID-16)

310:675-11-1. Scope

This Subchapter is applicable to small facilities serving ~~the mentally retarded~~ individuals with intellectual disabilities which provide residential accommodations and transitional living training to aid residents in adapting to live in the general society. Resident accommodations are limited to not more than 16 residents, plus any required "live-in" staff. Facilities qualifying under this subsection shall be exempt from other subsections of this Chapter, except for the definitions provided in 310:675-1-2 and as may be specifically referenced in this subsection. In addition to these requirements, all facilities must meet the provisions of the Nursing Home Care Act.

310:675-11-2. Active Treatment

In institutions for ~~the mentally retarded~~ individuals with intellectual disabilities, active treatment requires the following:

(1) The individual's regular participation, in accordance with an individual plan of care, in professionally developed and supervised activities, experience or therapies.

(2) An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experience or therapies necessary for the individual to reach those goals or objectives. The overall purpose of the plan is to help the individual function at the greatest physical, intellectual, social or vocational level he can presently or potentially achieve.

(3) An interdisciplinary professional evaluation that consists of complete medical, social and psychological diagnosis and evaluations and an evaluation of the individual's need for institutional care; and is made by a physician, a social worker and other professionals, at least one of whom is a qualified mental retardation intellectual disability professional.

(4) Reevaluation medically, socially and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individual plan of care, assessment of the resident's continuing need for institutional care, and consideration of alternate methods of care.

(5) An individual postinstitutionalization plan, as part of the individual plan of care, developed before discharge by a qualified mental retardation intellectual disability professional and other appropriate professionals. This must include provision for appropriate services, protective supervision, and other follow-up services in the resident's new environment.

(6) Individuals assigned for specific purpose of direct personal care to residents, including those conducting a training program to develop the resident's self-help and socialization skills. Does not include professionals performing duties related to their profession.

310:675-11-3. Qualified ~~mental retardation~~intellectual disability professional

A person who has specialized training or one (1) year of experience in treating or working with ~~the mentally retarded~~individuals with intellectual disabilities and is one of the following:

(1) A psychologist.
(2) A licensed doctor of medicine or osteopathy.
(3) An educator with a degree in education from an accredited program.
(4) A social worker with a bachelor's degree in:
(A) Social work from an accredited program; or
(B) A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker.
(5) A physical or occupational therapist.
(6) A speech pathologist or audiologist.
(7) A registered nurse.
(8) A therapeutic recreation specialist who:
(A) Is a graduate of an accredited program; and
(B) If the State has a licensing or registration procedure, is licensed or registered in the State.
(9) A rehabilitation counselor who is certified by the Committee of Rehabilitation Counselor Certification.

310:675-11-4. Occupancy

Residents selected for ~~ICF/MR-16~~ICF/IID-16 occupancy shall receive active treatment, and be capable of direction and emergency evacuation from the facility, as determined by a physician or nurse or qualified mental retardation intellectual disability professional.

310:675-11-5. Physical plant

(a) ICF/IID-16 facilities shall be of one hour (minimum) fire resistant construction as approved by the Department and the State Fire Marshal, or shall be fully protected by an automatic sprinkler system approved by the Department and the State Fire Marshal. In addition, ICF/IID-16 facilities shall comply with the requirements of the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016 applicable to residential board and care occupancies for small facilities are incorporated by reference. For Medicare or Medicaid certified ICF/IID-16s, the Life Safety Code adopted by the Centers for Medicare &

Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(b) Prior to issuance of license, the essential operation functions of the physical plant shall be submitted to licensing agency for review and approval. This submittal shall be in such detail as will depict compliance with applicable codes, including emergency evacuation and day to day living accommodations. ~~This submittal shall be accompanied by the applicant's written certification declaring the classification (prompt, slow, impractical) shown for "evacuation capabilities" Chapter 21, LSC 1985 Edition. The certified evacuation classification shall not change without written approval of State Fire Marshal and Licensing Agency. The Department shall receive, prior to each required survey, a written declaration by a physician or nurse or qualified intellectual disabilities professional, stating that each resident qualifies for the evacuation classification, as previously submitted and approved.~~

(c) Each facility must have a license. Any facility licensed under this part shall consist of contiguous construction.

(1) **Resident rooms.** The following requirements shall be provided:

(A) Capacity shall be a maximum of four (4) residents.

(B) Minimum area shall be 80 square feet per occupant in multi-bed rooms and 100 square feet in single bed rooms.

(C) Each resident shall have a minimum of three square feet of closet or locker space which shall contain at least a clothes rod and one adjustable shelf.

(2) **Service areas.** The following shall be provided:

(A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.

(B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.

(C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ICF/IID-16 to be conducted in private, and space for the maintenance of records pertaining to resident care.

(D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.

(E) Meal service space shall be provided as follows:

(i) Kitchen. Space for conventional food preparation and baking with sufficient storage for maintaining at least a four day supply of all foods required for a general diet, including cold storage.

(ii) Dining. There shall be 15 square feet per person allocated to permit residents and on-duty staff to dine at the same time.

(iii) Warewashing shall be in accordance with the requirements of the care facilities as stated in Chapter 257 (relating to Food Service Establishments) of this Title.

(F) Housekeeping materials and supplies shall be maintained in a designated area which is apart from the food service and sleeping areas.

(3) **Recreation, lounge and public areas.** Each ICF/IID-16 shall provide interior lounge and recreation space at a rate of no less than 20 square feet per bed. If public visitation areas are included, the lounge and recreation space shall be no less than 25 square feet per bed. Outside recreation lounge areas shall be provided. These areas shall have sufficient lighting to permit utilization after sundown.

(4) **Natural lighting and ventilation of rooms.** All habitable and occupiable rooms or spaces shall contain windows, skylights, monitors, glazed doors, transoms, glass block panels or other light transmitting media opening to the sky or on a public street, yard or court. The light transmitting properties and the area of the devices used shall be adequate to meet the minimum day lighting and ventilating requirements specified herein.

(5) **Window size.** Windows and exterior doors may be used as a natural means of light and ventilation, and when so used their aggregate glass area shall amount to not less than eight percent of the floor area served, and with not less than one half of this required area available for unobstructed ventilation.

310:675-11-6. Institutional and operational relationships

The ~~ICF/MR-16~~ ICF/IID-16 may be free standing in a community or may be on campus with a parent institution. The ~~ICF/MR-16~~ ICF/IID-16 may be an independent ownership and operation or may be part of a larger institutional ownership and operation. In any case, however, the ~~ICF/MR-16~~ ICF/IID-16 may have an effective, continuous relationship with a full scope ~~ICF/MR~~ ICF/IID which allows all necessary support and professional services as well as the expeditious transfer of residents if and when necessary.

310:675-11-7. Staffing

(a) The ~~ICF/MR-16~~ ICF/IID-16 shall have available enough qualified staff and support personnel to carry out the residential living, professional and special programs and services for residents as required by their individual needs, and of sufficient size that the facility does not depend on residents or volunteers for services.

(b) Each ~~ICF/MR-16~~ ICF/IID-16 shall maintain at least the minimum direct-care-staff ratios specified in OAC 310:675-13-12(a).

(c) In living units for the severely impaired client, the present and on duty direct care staff ratio would be:

(1) 1 to 4 from 7:00 a.m. to 3:00 p.m.;
(2) 1 to 4 from 3:00 p.m. to 11:00 p.m.; and
(3) 1 to 8 from 11:00 p.m. to 7:00 a.m.

(d) There should be sufficient dietary, nursing, housekeeping and administrative staff to serve the needs of the facility.

310:675-11-8. Administration

All sections of Subchapter 7 of this Chapter shall be applicable to the ~~ICF/MR-16~~ ICF/IID-16 facilities and operations.

310:675-11-9. Resident care services

In accordance with the needs of the residents, Subchapter 9 of this Chapter shall be applicable to the ~~ICF/MR~~ 16 ICF/IID-16 .

SUBCHAPTER 13. STAFF REQUIREMENTS

310:675-13-12. Direct care staffing

(a) Each facility shall maintain at least the minimum direct-care-staff-to-resident ratios specified in the Act at 63:1-1925.2.

(b) A licensed nurse shall be on duty eight hours a day, seven days a week on the day shift.

(c) If the director of nursing is a licensed practical nurse, a registered nurse shall be employed for at least eight hours per week as a consultant.

(d) There shall be a licensed nurse on duty twenty-four hours per day; provided however, that a facility licensed as a specialized facility for ~~the developmentally disabled~~individuals with intellectual disabilities shall only be required to provide 24 hour nursing when it has a resident who has a medical care plan. The department may waive this requirement when the facility demonstrates it has been unable, despite diligent effort, to recruit licensed nurses. The Department shall determine that a waiver of this requirement will not endanger the health or safety of the residents.

(e) There shall be at least one certified medication aide on duty when any shift is not covered by a licensed nurse.

(f) At least two direct care staff persons shall be on duty and awake at all times regardless of the number of residents.

(g) Willful violation of the requirements regarding direct-care staff shall be determined based on a review of facility staffing records and interviews with staff, residents, resident family members and/or guardians, and other parties which may have information relevant to the investigation. The determination by the Department of Health will include, but will not be limited to, the following factors:

(1) The nature, circumstances and gravity of the violations;
(2) The repetitive nature of the violations at the facility or others operated by the same or related entities;
(3) The previous degree of difficulty in obtaining compliance with the rules at the facility or others operated by the same or related entities; and
(4) Any substantial showing of good faith in attempting to achieve continuing compliance with the provisions of the Nursing Home Care Act.

310:675-13-14. Flexible staff-scheduling

(a) **Implementing flexible staff-scheduling.** Each facility seeking to implement the flexible staff-scheduling provisions of 63:1-1925.2(B)(5) shall request in writing a determination from the Department that the facility is in compliance with the staffing requirements of 63:1-1925.2(B)(3).

(b) **Requirements for eligibility.** Determination of flexible staff-scheduling privileges shall be based on compliance with the requirements at 63:1-1925.2(B)(6) and review of the staffing hours reported to the Oklahoma Health Care Authority. Reports shall be submitted to the Oklahoma Health Care Authority either though electronic mail or three and one-quarter inch diskette in an electronic format approved by that agency. The reviewed hours shall be for the previous three (3) calendar months from the date the request for determination is received.

(c) **Determination of compliance.** A determination of compliance with the requirements at 63:1-1925.2(B)(6)(a)(2)-(4) will be based on staffing reports and surveys for the three (3) months preceding the date the request for determination is received by the Department. For intermediate care facilities for ~~the mentally retarded~~individuals with intellectual disabilities loss of eligibility shall include findings of non-compliance with the Condition of Participation at 42 CFR 483.430, Facility Staffing.

(d) **Failure to meet the direct care service rate.** Facilities that have been granted flexible staff-scheduling privileges and receive a determination they have not met the direct care service rate shall lose their flexible staff-scheduling privileges until the facility re-establishes their eligibility under the requirements at 63:1-1925.2(B)(6)(b) and (c). *Facilities shall have the right to appeal and to the informal dispute resolution process with regard to penalties and sanctions imposed due to staffing noncompliance.* [63:1-1925.2(E)].

(e) **Loss of eligibility based on surveys or fraud.** Facilities seeking to re-establish flexible staff-scheduling privileges after a loss of eligibility under 63:1-1925.2(B)(7) shall be subject to the requirements at OAC 310:675-13-14(a), (b) and (c). For intermediate care facilities for ~~the mentally retarded~~individuals with intellectual disabilities loss of eligibility shall include findings of non-compliance with the Condition of Participation at 42 CFR 483.430, Facility Staffing.

(f) **Minimum staff in flexible staffing.** A facility failing to meet the flexible staff-scheduling requirement at 63:1-1925.2(B)(5)(b) shall be ineligible for flexible staff-scheduling privileges until the facility re-establishes their eligibility under the requirements at 63:1-1925.2(B)(6)(b) and (c).

(g) **Notification requirements.** The Department shall notify the facility and Oklahoma Health Care Authority on all decisions of eligibility.

(h) **Re-establishing eligibility.** A facility seeking to re-establish eligibility shall submit a written request to the Department. A request to re-establish eligibility is subject to the requirements at OAC 310:675-13-14(b).

(i) **Shift-based ratios for noncompliant facilities.** This paragraph implements 63:1-1925.2(F)(4).

(1) When the provisions of 63:1-1925.2(F)(1) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

(A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every five residents,

(B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every seven residents, and

(C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every thirteen residents.

(2) When the provisions of 63:1-1925.2(F)(2) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

(A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every five residents,

(B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every six residents, and

(C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every eleven residents.

(3) When the provisions of 63:1-1925.2(F)(3) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

(A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every four residents,

(B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every six residents, and

(C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every eleven residents.

[OAR Docket #19-678; filed 6-26-19]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 681. MEDICAL MARIJUANA CONTROL PROGRAM

[OAR Docket #19-679]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions [NEW]
310:681-1-1. Purpose [NEW]
310:681-1-2. Regulatory program established [NEW]
310:681-1-3. Limitations of licenses [NEW]
310:681-1-4. Definitions [NEW]
310:681-1-5. Criminal history screening [NEW]
310:681-1-6. Proof of residency [NEW]
310:681-1-7. Proof of identity [NEW]
310:681-1-8. Applicant photograph [NEW]
310:681-1-9. Recommending physician registration [NEW]
310:681-1-9.1 Recommending physician standards [NEW]
Subchapter 2. Medical Marijuana Licenses [NEW]
310:681-2-1. Application for patient license [NEW]
310:681-2-2. Application for patient license for persons under age eighteen (18) [NEW]
310:681-2-3. Application for caregiver's license [NEW]
310:681-2-3.1. Withdrawal of a caregiver's authorization [NEW]
310:681-2-4. Application for temporary patient license [NEW]
310:681-2-5. Term and renewal of medical marijuana license [NEW]
310:681-2-6. Information contained on patient and caregiver license [NEW]
310:681-2-7. Medical marijuana license verification system [NEW]
310:681-2-8. [RESERVED]
310:681-2-9. [RESERVED]
310:681-2-10. [RESERVED]
310:681-2-11. Restrictions on smokable medical marijuana and medical marijuana products [NEW]
310:681-2-12. [RESERVED]
310:681-2-13. [RESERVED]
Subchapter 3. Transportation License [NEW]
310:681-3-1. License for transportation of medical marijuana [NEW]
310:681-3-2. Requirements for transportation of marijuana [NEW]
Subchapter 4. Medical Research License [NEW]
310:681-4-1. [RESERVED]
310:681-4-2. [RESERVED]
310:681-4-3. [RESERVED]
Subchapter 5. Commercial Establishments [NEW]
310:681-5-1. License required [NEW]
310:681-5-1.1. Responsibilities of the license holder [NEW]
310:681-5-2. Licenses [NEW]
310:681-5-3. Applications [NEW]
310:681-5-4. Inspections [NEW]
310:681-5-5. [RESERVED]
310:681-5-6. Inventory tracking, records, reports and audits [NEW]
310:681-5-6.1. Penalties [NEW]
310:681-5-7. Tax on retail medical marijuana sales [NEW]
310:681-5-8. Composition of medical marijuana industry expert board/food safety standards board [NEW]
310:681-5-8.1. Food safety standards for processors [NEW]
310:681-5-9. Standards for handling and processing medical marijuana and medical marijuana products [NEW]
310:681-5-10. Medical marijuana waste disposal [NEW]
310:681-5-11. [RESERVED]
310:681-5-12. Marijuana transaction limitations [NEW]
310:681-5-13. Loss and theft [NEW]
310:681-5-14. [RESERVED]
310:681-5-15. [RESERVED]
310:681-5-16. [RESERVED]
310:681-5-17. Entry to commercial establishments [NEW]
310:681-5-18. Prohibited acts [NEW]
310:681-5-19. [RESERVED]
Subchapter 6. Commercial Facilities [NEW]
310:681-6-1. General security requirements for commercial establishment [NEW]
310:681-6-2. Construction of premises [NEW]
310:681-6-3. [RESERVED]
310:681-6-4. [RESERVED]
310:681-6-5. [RESERVED]
310:681-6-6. [RESERVED]
310:681-6-7. [RESERVED]
310:681-6-8. [RESERVED]
310:681-6-9. [RESERVED]
310:681-6-10. [RESERVED]
310:681-6-11. [RESERVED]
Subchapter 7. Packaging and Labeling [NEW]
310:681-7-1. Labeling [NEW]
310:681-7-2. Prohibited products [NEW]
Subchapter 8. Laboratory Testing [NEW]
310:681-8-1. [RESERVED]
310:681-8-2. [RESERVED]
310:681-8-3. [RESERVED]
310:681-8-4. [RESERVED]
310:681-8-5. [RESERVED]
310:681-8-6. [RESERVED]
310:681-8-7. [RESERVED]
Appendix A. [RESERVED]

AUTHORITY:

Commissioner of Health; 63 O.S. § 1-103; 63 O.S. §1-104; 63 O.S. § 420 (A) et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 28, 2019
COMMENT PERIOD:
February 15, 2019 through March 21, 2019
PUBLIC HEARING:
March 18, 2019
ADOPTION:
March 18, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions [NEW]
310:681-1-1. Purpose [NEW]
310:681-1-2. Regulatory program established [NEW]
310:681-1-3. Limitations of licenses [NEW]
310:681-1-5. Criminal history screening [NEW]
310:681-1-6. Proof of residency [NEW]
310:681-1-7. Proof of identity [NEW]
310:681-1-8. Applicant photograph [NEW]
310:681-1-9. Recommending physician registration [NEW]
310:681-1-9.1. Recommending physician standards [NEW]
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310:681-2-1. Application for patient license [NEW]
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310:681-2-4. Application for temporary patient license [NEW]
310:681-2-5. Term and renewal of medical marijuana license [NEW]
310:681-2-6. Information contained on patient and caregiver license [NEW]
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310:681-2-8. [RESERVED]
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310:681-2-11. Restrictions on smokable medical marijuana and medical marijuana products [NEW]
310:681-2-12. [RESERVED]
310:681-2-13. [RESERVED]
Subchapter 3. Transportation License [NEW]
310:681-3-1. License for transportation of medical marijuana [NEW]
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Subchapter 4. Medical Research License
310:681-4-1. [RESERVED]
310:681-4-2. [RESERVED]
310:681-4-3. [RESERVED]
Subchapter 5. Commercial Establishments [NEW]
310:681-5-1. License required [NEW]
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310:681-5-15. [RESERVED]
310:681-5-16. [RESERVED]
310:681-5-17. Entry to commercial establishments [NEW]
310:681-5-18. Prohibited acts [NEW]
310:681-5-19. [RESERVED]
Subchapter 6. Commercial Facilities [NEW]
310:681-6-1. General security requirements for commercial establishment [NEW]
310:681-6-2. Construction of premises [NEW]
310:681-6-3. [RESERVED]
310:681-6-4. [RESERVED]
310:681-6-5. [RESERVED]
310:681-6-6. [RESERVED]
310:681-6-7. [RESERVED]
310:681-6-8. [RESERVED]
310:681-6-9. [RESERVED]
310:681-6-10. [RESERVED]
310:681-6-11. [RESERVED]
Subchapter 7. Packaging and Labeling [NEW]
310:681-7-1. Labeling [NEW]
310:681-7-2. Prohibited products [NEW]
Subchapter 8. Laboratory Testing [NEW]
310:681-8-1. [RESERVED]
310:681-8-2. [RESERVED]
310:681-8-3. [RESERVED]
310:681-8-4. [RESERVED]
310:681-8-5. [RESERVED]
310:681-8-6. [RESERVED]
310:681-8-7. [RESERVED]
Appendix A. [RESERVED]
Gubernatorial approval:
August 6, 2018 (effective August 25, 2018)
Register publication:
35 OK Reg 709
Docket number:
18-651
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions [NEW]
310:681-1-4. Definitions [NEW]
Subchapter 5. Commercial Establishments [NEW]
310:681-5-8.1. Food safety standards for processors [NEW]
Gubernatorial approval:
December 20, 2018 (effective December 20, 2018)
Register publication:
36 OK Reg 222
Docket number:
19-25
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 21, part 101 of the Code of Federal Regulations ("CFR"), as of August 22, 2018
Title 21, part 120 of the Code of Federal Regulations ("CFR"), as of August 22, 2018
Incorporating rules:
310:681-5-8.1
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 NE 10th St., Oklahoma City, OK 73117.
GIST/ANALYSIS:
This Chapter makes permanent the sets of emergency rules adopted July 11th, August 3rd and December 20th, 2018, with amendments. This rule combines emergency rules from multiple adoptions into one comprehensive Chapter and adopted as permanent.

This action makes permanent the 2018 emergency rules at OAC 310:681 the Department issued to fulfill requirements resulting from the passage of State Question 788, as codified at 63 O.S. § 420A, *et seq*. State Question 788, as codified at 63 O.S. § 420 (C) states that "a regulatory office shall be established under the Oklahoma State Department of Health."

Subchapter 1 (General Provisions) of the rule establishes an office with the title of the Oklahoma Medical Marijuana Authority and defines terms and requirements.

Subchapter 2 (Medical Marijuana Licenses) establishes processes for the issuance of patient and caregiver licenses authorizing access to medical marijuana and associated products. The subchapter also establishes processes

and terms for surrender, renewal and expiration of patient and caregiver licenses.

Subchapter 3 (Transportation Licenses) establishes standards for issuance of licenses to qualifying applicants to transport medical marijuana products.

Subchapter 4 (Medical Research Licenses) reserves a subchapter of 310:681, pursuant to 63 O.S. § 425A(H).

Subchapter 5 of the Chapter establishes rules for licensing of commercial establishments (dispensaries, laboratories, growers, processors and research entities) for the growth, processing and dispensing of medical marijuana. Penalties as established by law at 63 O.S. § 420 *et seq.* are listed in the subchapter.Commercial entities are subject to requirements for inventory tracking, record retention, reporting and audits in the subchapter. Operations of licensed processors are subject to annual, unannounced on-site inspection by the Department. Licensed Processors are required to label and package foods in compliance with Title 21, part 101 of the Code of Federal Regulations, as incorporated in the rule (310:681-5-8.1(e)(1) Additionally, licensed processors would be required to test food products containing medical marijuana for 2 microbials, solvent and chemical residue, metals, pesticide residue, potency and contaminants and filth under the rule. Furthermore, the rule clarifies that licensed processors are not relieved of any obligations under existing laws, rules and regulations. The regulations provide optional Hazard Analysis and Critical Control Plans to be adopted by licensed processors. A set of required laboratory testing procedures and allowable thresholds are established for food products containing medical marijuana.

Subchapter 6 (Commercial Facilities) establishes general security and construction requirements for licensed commercial entities.

Subchapter 7 (Packaging and Labeling) requires standards for packaging and labeling of medical marijuana.

Subchapter 8 (Laboratory Testing) reserves a subchapter of 310:681.

CONTACT PERSON:

Ashley Scott, Agency Rule Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; email: OSDHRules@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

310:681-1-1. Purpose

The purpose of this Chapter is to ensure the health and safety of all Oklahomans and provide reasonable and orderly regulation of medical marijuana as authorized by the lawful passage of State Question 788. This regulatory authority shall be known as the "Oklahoma Medical Marijuana Authority" ("OMMA") and shall be a division of the Oklahoma State Department of Health.

310:681-1-2. Regulatory program established

(a) Pursuant to 63 O.S. § 420A(C), a regulatory program is hereby established under the Oklahoma State Department of Health in the OMMA, and the initiation, administration, regulation, and enforcement of such program shall be the responsibility of the OMMA or its designee.

(b) All license applications, inquiries, and other correspondence shall be directly electronically submitted to and received and processed by the Oklahoma State Department of Health by the OMMA division or its designee, except as is otherwise required by law or expressly permitted in writing by the Department.

(c) All applications and forms provided for under this Chapter are available on the Oklahoma State Department of Health's Oklahoma Medical Marijuana Authority website at http://omma.ok.gov/.

(d) The Oklahoma State Department of Health is located at 1000 N.E. 10 Street, Oklahoma City, Oklahoma, 73117. All approval and rejection letters shall be sent to the applicant through U.S. Mail.

310:681-1-3. Limitations of licenses

All licenses and rights granted under this Chapter and under 63 O.S. § 420A et seq. shall only be valid in the State of Oklahoma, excluding any tribal trust or tribal restricted land or federal lands in the state.

310:681-1-4. Definitions

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

"Applicant" means the natural person or entity in whose name a license would be issued.

"Application status" means the status of a submitted application and includes the following:

(A) "Pending" means the application has been submitted but a review is not yet complete;

(B) "Rejected" means the application has been reviewed but contains one or more errors requiring correction by the applicant at no additional fee before a final determination on the application can be made. "Rejected" does not mean the application is denied. OMMA has 14 days to review the submission of any corrections to a rejected application;

(C) "Approved" means the application has been approved and that a license will be issued and mailed to the applicant; and

(D) "Denied" means the applicant does not meet the qualifications under 63 O.S. § 420A and this Chapter for a license.

"Batch" means a specifically identified quantity of marijuana, no greater than ten (10) pounds, that is uniform in strain, cultivated using the same growing practices, and harvested at the same time at the same location, and dried or cured under uniform conditions; and with regard to medical marijuana concentrate and medical marijuana products, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is processed, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

"Batch number" means a unique numeric or alphanumeric identifier assigned prior to any testing or sale to allow for inventory tracking and traceability.

"Cannabinoid" means any of the diverse chemical compounds that can act on cannabinoid receptors in cells and alter neurotransmitter release in the brain, including phytocannabinoids that are produced naturally by marijuana and some other plants.

"Clone" means a non-flowering plant cut from a mother plant that is no taller than eight inches and is capable of developing into a new plant.

"Commercial establishment" ("Establishment") or **"Commercial licensee"** means an individual or entity licensed under this Chapter as a medical marijuana dispensary, grower, processor, or researcher.

"Commercial license" means a license issued to a medical marijuana dispensary, grower, processor, or researcher.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health.

"Complete(d) application" means a document prepared in accordance with 63 O.S. § 420A et seq., these Rules, and the forms and instructions provided by the Department, including any supporting documentation required by the Department and the license fee.

"Department" means the Oklahoma State Department of Health or its agent or designee.

"Dispense" means the retail sale of medical marijuana, medical marijuana concentrate, or a medical marijuana products to a qualified patient, the qualified patient's parent(s) or legal guardian(s) if qualified patient is a minor, and a licensed caregiver.

"Dispensary" means an individual or entity that has been licensed by the Department pursuant to 63 O.S. § 421A and this Chapter, which allows the dispensary to purchase medical marijuana from a processer or grower and to sell medical marijuana only to a qualified patient, to the qualified patient's parent(s) or legal guardian(s) if qualified patient is an minor, and a licensed caregiver.

"Disqualifying criminal conviction" means:

(A) Any non-violent felony conviction within last two (2) years of submitting an application to the Department;

(B) Any violent felony conviction for an offense listed in 57 O.S. § 571(2) within last five (5) years of submitting an application to the Department; or

(C) Incarceration for any reason during submission of application to the Department.

"Entity" means a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

"Food" has the same meaning as set forth in 63 O.S. § 1-1101 and the Oklahoma Administrative Code ("OAC") 310:257-1-3 ("'food' means (1) articles used for food or drink for man, (2) chewing gum, and (3) articles used for components of any such article") and set forth in OAC 310:260-1-6 ("'food' means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption").

"Grower" or **"Commercial grower"** means an individual or entity that has been licensed by the Department pursuant to 63 O.S. § 422A, which allows the grower to grow, harvest, dry, cure, and package medical marijuana according to this Chapter for the purpose of selling to a dispensary or processor.

"Information panel" has the same definition as set forth in 21 CFR § 101.2 and means "that part of the label immediately contiguous and to the right of the principal display panel as observed by an individual facing the principal display panel."

"Label" carries the same definition as set forth in 63 O.S. § 1-1101 and "means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there be any, of the retail package of such article, or is easily legible through the outside container or wrapper."

"License" means a state issued license or other state issued documentation proving the holder of such license is a member of a state- regulated medical marijuana program.

"License number" means the unique multi-character identifier issued and printed upon each license.

"Licensee" means any natural born person or entity that holds a medical marijuana license provided for in this Chapter, excluding inmates of any local, county, state, or federal correctional facility or jail.

"Licensed Packager" means as used in 63 O.S. § 422A(C) a processor.

"Lot" means the food produced during a period of time indicated by a specific code.

"Marijuana" means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marijuana" does not include the mature stalks of the plant or fiber produced from the stalks; oil or cake made from the seeds of the plant; or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; or industrial hemp, from the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

"Mature plant" means harvestable female marijuana plant that is flowering.

"Medicaid" means the federal program that is also commonly known as "SoonerCare."

"Medical marijuana" means marijuana that is grown, processed, dispensed, tested, possessed, or used for a medical purpose, and includes medical marijuana concentrate and medical marijuana products.

"Medical marijuana concentrate" ("Concentrate") means a substance obtained by separating cannabinoids from any part of the marijuana plant by physical or chemical means, so as to deliver a product with a cannabinoid concentration greater than the raw plant material from which it is derived.

"Medical marijuana product" means a product that contains cannabinoids that have been extracted from plant material

or the resin therefrom by physical or chemical means and is intended for administration to a qualified patient, including but not limited to oils, tinctures, edibles, pills, topical forms, gels, creams, and other derivative forms.

"Medical marijuana waste" means unused, surplus, returned or out-of- date marijuana; recalled marijuana; unused marijuana; plant debris of the plant of the genus cannabis, including dead plants and all unused plant parts and roots; and any wastewater generated during growing and processing.

"Minor" means any natural person younger than eighteen (18) years of age.

"Mother plant" means a marijuana plant that is grown or maintained for the purpose of generating clones, and that will not be used to produce plant material for sale to a processor or dispensary.

"Oklahoma resident" or **"Resident"** means an individual who resides in the State of Oklahoma and can provide proof of residency as required by 63 O.S. § 420A et seq. and OAC 310:681-1-6.

"Oklahoma uniform symbol" means the image, established by the Department and made available to commercial licensees, indicating the package contains marijuana and must be printed at least one-half inch in size by one-half inch in size in color.

"Out-of-State Medical Marijuana Patient License" means an unexpired medical marijuana patient license issued by another U.S. state, which is the substantial equivalent of the Oklahoma medical marijuana patient license issued pursuant to OAC 310:681-2-1 and OAC 310:681-2-2.

"Package" or **"Packaging"** means any container or wrapper that a grower or processor may use for enclosing or containing medical marijuana or medical marijuana products.

"Patient" or **"Qualified patient"** means a person that has been properly issued a medical marijuana license pursuant to 63 O.S. § 420A et seq. and these rules.

"Physician" means a doctor of medicine or a doctor of osteopathic medicine who holds a valid, unrestricted and existing license to practice in the State of Oklahoma and meets the definition of "board certified" under rules established by either the Oklahoma Board of Medical Licensure or the Oklahoma Board of Osteopathic Examiners.

"Plant material" means the leaves, stems, buds, and flowers of the marijuana plant, and does not include seedlings, seeds, clones, stalks, or roots of the plant or the weight of any non-marijuana ingredients combined with marijuana.

"Principal display panel" has the same definition as set forth in 21 CFR § 101.1 and "means the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale."

"Private school" means an elementary, middle, or high school maintained by private individuals, religious organizations, or corporations, funded, at least in part, by fees or tuition, and open only to pupils selected and admitted based on religious affiliations or other particular qualifications.

"Process" means to distill, extract, manufacture, prepare, or otherwise produce a medical marijuana product or medical marijuana concentrate.

"Processor" means an individual or entity that has been licensed by the Department pursuant to 63 O.S. § 423A, which allows the processor to: purchase medical marijuana from a grower or processor; process, package, and sell medical marijuana to a dispensary or processor; and may process medical marijuana received from a qualified patient into a medical marijuana concentrate, for a fee.

"Public school" means an elementary, middle, or high school established under state law, regulated by the local state authorities in the various political subdivisions, funded and maintained by public taxation, and open and free to all children of the particular district where the school is located.

"Retailer" as used in 63 O.S. § 420A et seq. means a dispensary.

"Revocation" means the Department's final decision in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq., that any license issued pursuant to 63 O.S. § 420A et seq. and this Chapter is rescinded.

"Rules" means, unless otherwise indicated, the rules as adopted and set forth in OAC 310:681.

"Seedling" means a marijuana plant that has no flowers.

"State question" means Oklahoma State Question No. 788 and Initiative Petition Number 412.

"Transportation license" means a license issued automatically to commercial licensees upon approval of a commercial license, which allows growers, processors, or dispensaries, or their authorized agent(s), to deliver medical marijuana from their licensed locations to the licensed locations of other growers, processors, or dispensaries.

310:681-1-5. Criminal history screening

(a) **Parties subject to screening.** Prior to issuance of any dispensary, grower, processor, transportation, or researcher license authorized by 63 O.S. § 420A et seq. and this Chapter, the following shall undergo an Oklahoma state criminal history background check within thirty (30) days prior to the application for the license:

(1) Individual applicants applying on their own behalf;

(2) All owners of any applicant for a dispensary, grower, processor, or transportation license; and

(3) For research license applicants, all principal investigators involved in the research project.

(b) **Disqualifying Criminal Conviction.** Any commercial applicant with a disqualifying criminal conviction is not qualified to receive or renew a commercial license.

(c) **OBNDD Registration.** Any dispensary, grower, processor, or researcher issued a license authorized by this Chapter, is required to obtain an Oklahoma State Bureau of Narcotics and Dangerous Drugs Control ("OBNDD") registration prior to possessing or handling any marijuana or marijuana product pursuant to 63 O.S. §§ 2-302 & 2-303, 63 O.S. § 2-101, and OAC 475:10-1-10.

(d) **Fees.** All applicable fees, including those charged by the Oklahoma State Bureau of Investigation vendor or OBNDD, are the responsibility of the applicant.

310:681-1-6. Proof of residency

(a) Applicants shall establish their residency through submission of an electronic copy or digital image in color of one of the following unexpired documents:

(1) An Oklahoma issued driver's license;

(2) An Oklahoma Identification Card;

(3) An Oklahoma voter identification card;

(4) A utility bill for the calendar month preceding the date of application, excluding cellular telephone, television, and internet bills;

(5) A residential property deed to property in the State of Oklahoma;

(6) A current rental agreement for residential property located in the State of Oklahoma; or

(7) Other documentation that the Department deems sufficient to establish residency.

(b) Documents submitted should provide a valid residential address. Documents listing addresses of P.O. Boxes are not sufficient proof of residency and will be rejected.

310:681-1-7. Proof of identity

Applicants shall establish their identity through submission of an electronic copy or digital image in color of one of the following unexpired documents:

(1) An Oklahoma issued driver's license;

(2) An Oklahoma Identification Card;

(3) A United States Passport or other photo identification issued by the United States government;

(4) A tribal identification card approved for identification purposes by the Oklahoma Department of Public Safety; or

(5) Other documentation that the Department deems sufficient to establish identity.

310:681-1-8. Applicant photograph

The digital photograph to be submitted with an application shall:

(1) Be a clear, color photograph of the head and top of the shoulders;

(2) Be an image file in a .jpg, .png or .gif digital image format no larger than 3 MB in size;

(3) Be in one of the following approved formats:

(A) A scanned photograph shall be scanned at a resolution of 300 pixels per inch from a 2 x 2 inch image with dimensions in a square aspect ratio (the height must be equal to the width).

(B) A captured image must have minimum acceptable pixel dimensions of 600 x 600 pixels and maximum acceptable pixel dimensions of 1200 x 1200 pixels.

(4) Be taken within the last six (6) months to reflect the applicant's appearance;

(5) Be taken in front of a plain white or off-white background;

(6) Be taken in full-face view directly facing the camera at eye level with nothing obscuring the face, such as a hat or eyewear:

(A) If a hat or head covering is worn for religious purposes, submit a signed statement that verifies the hat or head covering in the photo is part of recognized, traditional religious attire that is customarily or required to be worn continuously in public.

(B) If a hat or head covering is worn for medical purposes, submit a signed doctor's statement verifying the hat or head covering in the photo is used daily for medical purposes.

(C) Applicant's full face must be visible and your hat or head covering cannot obscure your hairline or cast shadows on your face.

(7) Be taken with a neutral facial expression (preferred) or a natural smile with the mouth closed, and with both eyes open;

(8) Not be digitally enhanced or altered to change the appearance in any way; and

(9) Sufficiently resemble the photograph included in any identification provided for proof of identity or residence.

310:681-1-9. Recommending physician registration

(a) A physician may file a registration with the Department as a recommending physician on a form prescribed by the Department if the physician holds a valid, unrestricted and existing license to practice in the State of Oklahoma and meets the definition of "board certified" under rule established by either the Oklahoma Board of Medical Licensure or the Oklahoma Board of Osteopathic Examiners.

(b) If a physician chooses to register with the Department, a registration must include, at a minimum, all of the following:

(1) The physician's full name, business address, professional email address, telephone numbers and, if the physician owns or is affiliated with a medical practice, the name of the medical practice;

(2) The physician's area of board certification and sufficient documentation proving the physician's unexpired board certification;

(3) The physician's medical license number; and

(4) A certification by the physician that states that the physician's Oklahoma license to practice medicine is active and in good standing.

310:681-1-9.1. Recommending physician standards

(a) Any Physician, before making a recommendation for medical marijuana under these provisions, shall be in "good standing" with their licensure board. Physicians in residency or other graduate medical training do not meet the definition of Physician under this Subchapter and any recommendation for a patient medical marijuana license will be rejected by the Department.

(b) When recommending a medical marijuana license, a physician shall use the accepted standards a reasonable and prudent physician would follow when recommending any medication to a patient.

SUBCHAPTER 2. MEDICAL MARIJUANA LICENSES

310:681-2-1. Application for patient license

(a) The application for a patient license shall be on the Department issued form and shall include at a minimum:

(1) The applicant's first name, middle name, last name and suffix, if applicable;

(2) The applicant's valid mailing address;

(3) The applicant's date of birth;

(4) The applicant's telephone number and email address;

(5) The signature of the applicant attesting the information provided by the applicant is true and correct; and

(6) The date the application was signed.

(b) An application must be submitted within thirty (30) days of signature or it will be rejected by the Department.

(c) A complete application shall include the following documentation or the application will be rejected:

(1) Documents establishing the applicant is an Oklahoma resident as established in OAC 310:681-1-6 (relating to proof of residency).

(2) Documents establishing proof of identity as established in OAC 310:681-1-7 (relating to proof of identity).

(3) A digital photograph as established in OAC 310:681-1-8 (relating to applicant photograph).

(4) A certification and recommendation from an Oklahoma Board Certified Physician dated within thirty (30) days of the date of submission of the application to the Department, on the form provided by the Department, which includes the following:

(A) The physician's name and medical license or board certification number including an identification of the physician's license type and area of board certification;

(B) Office address on file with the physician's licensing board;

(C) Telephone number on file with the physician's licensing board;

(D) The patient/applicant's date of birth;

(E) The physician's signed and dated attestation of the following:

(i) The physician has established a medical record and has a bona fide physician-patient relationship;

(ii) The physician has determined the presence of a medical condition(s) for which the patient/applicant is likely to receive therapeutic or palliative benefit from use of medical marijuana;

(iii) The patient/applicant is recommended a medical marijuana license according to the accepted standards a reasonable and prudent physician would follow for recommending or approving any medication as described at OAC 310:681-1-9.1 (relating to recommending physician standards);

(iv) If applicable, the patient/applicant is homebound and unable to ambulate sufficiently to allow them to regularly leave their residence; and the physician believes the patient/applicant would benefit from having a caregiver with a caregiver's license designated to manage the patient's medical marijuana on the patient's behalf;

(v) The information provided by the physician in the certification is true and correct; and

(vi) Stating the method by which the physician verified the patient's identity as provided in OAC 310:681-1-7 (relating to proof of identity).

(d) Payment of the application fee as established in 63 O.S. § 420A et seq. is required unless the applicant is insured by Medicaid or Medicare.

(1) If the applicant is insured by Medicaid or Medicare, the applicant must provide a copy of their insurance card or other acceptable verification.

(2) Upon receipt of this verification the Department may attempt to verify the applicant is currently insured by the insuring agency.

(3) If the Department is unable to verify the insurance, the application shall be rejected until verification is obtained.

(4) All applicants who are verified as being insured by Medicaid or Medicare shall pay a reduced application fee as established in 63 O.S. § 420A et seq.

(5) Application fees are nonrefundable.

310:681-2-2. Application for patient license for persons under age eighteen (18)

(a) The application for a patient license for persons under the age of eighteen (18) shall be on the Department issued form and shall include at a minimum:

(1) The first name, middle name, last name and suffix, if applicable, of the applicant and of the applicant's parent(s) or legal guardian(s);

(2) The mailing address of the applicant and of the applicant's parent(s) or legal guardian(s);

(3) The date of birth of the applicant and of the applicant's parent(s) or legal guardian(s);

(4) The telephone number and email address of the applicant and/or the applicant's parent(s) or legal guardian(s);

(5) If the person submitting the application on behalf of a minor is the minor's legal guardian, a copy of documentation establishing the individual as the minor's legal guardian;

(6) The signature and attestation by the parent(s) or legal guardian(s) that the information provided in the application is true and correct; and

(7) The date the application was signed.

(b) An application must be submitted within thirty (30) days of signature or it will be rejected by the Department.

(c) A complete application shall include the following documentation or the application will be rejected:

(1) Documents establishing the applicant's parent(s) or legal guardian (s) is an Oklahoma resident as established in OAC 310:681-1- 6 (relating to proof of residency).

(2) Documents establishing proof of identity as set forth in OAC 310:681-1-7 (relating to proof of identity) for the applicant and the applicant's parent(s) or legal guardian(s).
(3) A digital photograph, as established in OAC 310:681-1-8 (relating to applicant photograph), of the applicant and the applicant's parent(s) or legal guardian(s).
(4) Certifications and recommendations from two Oklahoma Board Certified physicians dated within thirty (30) days of the date of submission of the application to the Department, on the forms provided by the Department, and including the information required under OAC 310:681-2-1(4).

(d) Minor Patient Licenses are valid for a term of two (2) years, or until the minor turns age eighteen (18), whichever occurs first.

(e) Under no circumstances shall a minor patient license holder be authorized to smoke or vaporize any medical marijuana or medical marijuana products, unless both recommending physicians agree it is medically necessary. This Subsection does not prohibit minors from using nebulizers or other aerosolized medical devices.

(f) Payment of the application fee as established in 63 O.S. § 420A et seq. is required unless the applicant is insured by Medicaid or Medicare.
(1) If the applicant is insured by Medicaid or Medicare, the applicant must provide a copy of their insurance card or other acceptable verification.
(2) Upon receipt of this verification the Department may attempt to verify the applicant is currently insured by the insuring agency.
(3) If the Department is unable to verify the insurance, the application shall be rejected until verification is obtained.
(4) All applicants who are verified as being insured by Medicaid or Medicare shall pay a reduced application fee as established in 63 O.S. § 420A et seq.
(5) Application fees are nonrefundable.

310:681-2-3. Application for caregiver's license

(a) Applications for a caregiver's license for caregivers of a licensed patient may be made at any time during the term of the patient license.

(b) Only one caregiver's license shall be issued for each patient license, except in the case of a licensed patient under the age of eighteen (18) whereby two (2) parents and/or legal guardians may be recognized as the minor's caregivers, if such minor is homebound.

(c) A caregiver's application will be accepted for a patient who has a physician's attestation that the patient is homebound or does not have the capability to self-administer or purchase medical marijuana due to developmental disability or physical or cognitive impairment and would benefit by having a designated caregiver to manage medical marijuana on the behalf of the patient as provided in OAC 310:681-2-1(c)(4)(E)(iv).

(d) The caregiver's application shall be made on a form provided by the Department and shall include the following:
(1) All information and documentation for the caregiver provided for In OAC 310:681-2-1(a) and (c) except there shall be no medical certification from an Oklahoma Board Certified Physician nor fee assessed for a caregiver's license;
(2) A signed and dated attestation from the patient license holder or patient applicant, or the patient's parent(s) or legal guardian(s) if patient is under eighteen (18) years of age, appointing the caregiver as their designee under this provision. If the patient license holder is incapacitated or subject to legal guardianship, a durable medical power of attorney or a court order for guardianship may be submitted and the person appointed to act under that document may execute the notarized statement; and
(3) The patient license number shall be included in the application.

310:681-2-3.1. Withdrawal of a caregiver's authorization

A caregiver's license shall be withdrawn for any patient that provides written or electronic notification to the Department, on the Department provided form, of their wish to withdraw the caregiver's authorization. This withdrawal shall not be subject to appeal.

310:681-2-4. Application for temporary patient license

(a) Temporary patient license application shall be made on a form provided by the Department and shall include the following:
(1) All information provided for in OAC 310:681-2-1(a) (relating to patient license application);
(2) Electronic copy or digital image in color of applicant's unexpired out-of-state medical marijuana patient license;
(3) Electronic copy or digital image in color of one of the following unexpired documents:
(A) A valid state issued driver's license;
(B) A valid state issued Identification Card;
(C) A United States Passport or other photo identification issued by the United States government; or
(D) Other documentation that the Department deems sufficient to establish identity;
(4) A digital photograph as established in OAC 310:681-1-8 (relating to applicant photograph); and
(5) If a temporary patient applicant is under the age of eighteen (18), in addition to complying with paragraphs (1) (2) and (3) of this subsection, applicant shall also comply with OAC 310:681-2-2(a)(1)- (7).

(b) Digital images of the records required in this Section shall be of sufficient clarity that all text is legible. See the requirements specified in OAC 310:681-1-8 (relating to applicant photograph) for resolution guidance.

(c) The fee for a temporary patient license shall be the fee established in statute at 63 O.S. § 420A et seq.

(d) Application fees are nonrefundable.

310:681-2-5. Term and renewal of medical marijuana license

(a) **Patient License Term.** Medical marijuana patient licenses issued under OAC 310:681-2-1 and OAC 310:681-2-2 shall be for a term of two (2) years from the date of issuance, unless revoked by the Department or voluntarily surrendered by the patient.

(b) **Caregiver License Term.** Caregiver's licenses may not extend beyond the expiration date of the underlying patient license regardless of the issue date.

(c) **Temporary Patient License Term.** Temporary patient licenses issued under OAC 310:681-2-4 shall be for a term of thirty (30) days from the date of issuance; however, temporary patient licenses may not extend beyond the expiration date of the underlying out-of-state medical marijuana patient license.

(d) **Change in information.** It is the responsibility of the license holder to notify the Department in writing within thirty (30) days of any changes in contact information.

(e) **Renewal.** It is the responsibility of the license holder to renew the license, with all applicable documentation, prior to the date of expiration of the license by following the procedures provided in OAC 310:681-2-1, 310:681- 2-2, 310:681-2-3, and/or 310:681-2-4.

(f) **Renewal Fee.** The fee for renewal shall be the fee established in statute for the license at 63 O.S. § 420A et seq. Application fees are nonrefundable.

(g) **Surrender of license.**

(1) A licensed patient or caregiver may voluntarily surrender a license to the Department at any time.

(2) If a licensee voluntarily surrenders a license, the licensee shall:

(A) Return the license to the Department; and

(B) Submit a surrender license form provided by the Department.

(h) **License revocation and suspension.** Procedures for revocation and suspension of licenses are stated in the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq. These procedures provide for the licensee to be notified of alleged violation(s) of the Department rules and applicable law. These procedures also provide for the licensee to have the opportunity to be present at a hearing and to present evidence in his or her defense. The Commissioner of Health or his or her designee may promulgate an administrative compliance order revoking or suspending the license, dismissing the matter, or providing for other relief as allowed by law. At any time after the action is filed against the commercial licensee, the Department and the licensee may dispose of the matter by consent order or stipulation. Orders are appealable in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq.

310:681-2-6. Information contained on patient and caregiver license

Licenses issued pursuant to Sections 310:681-2-1, 2, 3, and 4 of this Subchapter shall contain the following:

(1) The digital photograph of the license holder;

(2) The name and date of birth of the license holder;

(3) The name of parent(s) or legal guardian(s) of minor license holder, if applicable;

(4) The city and county of residence of the license holder;

(5) The type of license;

(6) The date the license expires; and

(7) The unique 24- character license number assigned to the license holder and caregiver, if applicable.

310:681-2-7. Medical marijuana license verification system

The Department will make available on its website and via telephone a system by which authenticity and validity of medical marijuana patient and caregiver licenses may be verified.

310:681-2-8. [RESERVED]

310:681-2-9. [RESERVED]

310:681-2-10. [RESERVED]

310:681-2-11. Restrictions on smokable medical marijuana and medical marijuana products

All smokable, vaporized, vapable and e-cigarette medical marijuana and medical marijuana products smoked by a patient license holder are subject to the same restrictions for tobacco under Section 1-1521 et. seq. of Title 63 of Oklahoma statutes, commonly referred to as the " Smoking in Public Places and Indoor Workplaces Act."

310:681-2-12. [RESERVED]

310:681-2-13. [RESERVED]

SUBCHAPTER 3. TRANSPORTATION LICENSE

310:681-3-1. License for transportation of medical marijuana

(a) A medical marijuana transportation license will be issued to qualifying applicants for a commercial licenses at the time of approval.

(b) A transportation license shall enable the holder to transport marijuana from an Oklahoma dispensary, grower, or processor, to an Oklahoma dispensary, grower, or processor.

310:681-3-2. Requirements for transportation of marijuana

(a) All medical marijuana shall be transported in a locked container, shielded from public view, and clearly labeled "Medical Marijuana or Derivative."

(b) Commercial licensees or their authorized agents or employees shall carry a copy of the commercial license and transportation license while transporting medical marijuana.

(c) Commercial licensees shall implement appropriate security measures to deter and prevent the theft and diversion of marijuana during transportation.

SUBCHAPTER 4. MEDICAL RESEARCH LICENSE [RESERVED]

310:681-4-1. [RESERVED]

310:681-4-2. [RESERVED]

310:681-4-3. [RESERVED]

SUBCHAPTER 5. COMMERCIAL ESTABLISHMENTS

310:681-5-1. License required

(a) No person or entity shall operate a medical marijuana dispensary, grower operation, processor, or research project without first obtaining a license from the Department pursuant to 63 O.S. § 420A et seq. and the Rules in this Chapter. Only a person who is in compliance with the requirements of 63 O.S. § 420A et seq. and these Rules shall be entitled to receive or retain such a license.

(b) All commercial licenses shall be on forms prescribed by the Department.

(c) Application fees are nonrefundable.

310:681-5-1.1. Responsibilities of the license holder

Upon acceptance of the license issued by the Department, the license holder in order to retain the license shall:

(1) Post the license in a location in the commercial establishment that is conspicuous to consumers;

(2) Comply with the provisions in this Chapter;

(3) Allow representatives of the Department access to the commercialestablishment as specified under OAC 310:681-5-4 and OAC 310:681-5-(4)6;

(4) Comply with directives of the Department including time frames for corrective actions specified in inspection reports, audit reports, notices, orders, warnings, and other directives issued by the Department in regard to the license holder's commercial establishment or in response to community emergencies;

(5) Accept notices issued and served by the Department according to law;

(6) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Chapter or a directive of the Department, including time frames for corrective actions specified in inspection reports, audit reports, notices, orders, warnings, and other directives; and

(7) If applicable, submit the annual renewal application and pay all renewal license and late fees, if any.

310:681-5-2. Licenses

(a) **Timeframe.** A commercial establishment license shall be issued for a twelve (12) month period expiring one (1) year from the date of issuance. The license may be issued upon receipt of a completed application, payment of application fee, and verification by the Department the individual or entity complies with the requirements of 63 O.S. § 420A et seq. and this Chapter.

(b) **Location.** A business establishment license shall only be valid for a single location at the address listed on the application.

(c) **Renewal of license.**

(1) It is the responsibility of the license holder to renew the license, with all applicable documentation, prior to the date of expiration of the license by following the procedures provided in OAC 310:681-5-3.

(2) Before renewing a license, the Department may require further information and documentation and may require additional background checks to determine the licensee continues to meet the requirements of 63 O.S. § 420A et seq. and these rules.

(3) A commercial establishment licensee whose license is not renewed, or whose license is revoked, suspended, or voluntarily surrendered, shall cease all operations immediately upon expiration of the license.

(A) A commercial establishment has thirty (30) days from date of expiration, revocation, suspension, or surrender of a commercial license to liquidate and transfer all medical marijuana to another commercial establishment that (1) the commercial establishment may lawfully sell to and (2) is licensed to possess such medical marijuana.

(B) Any medical marijuana still in possession after date of expiration, revocation, suspension, or surrender, or medical marijuana products not liquidated after thirty (30) days, shall be disposed of as specified under OAC 310:681-5-10.

(4) Upon the determination that a licensee has not met the requirements for renewal, the Department shall provide written notice to the licensee. The notice shall provide an explanation for the denial of the renewal application.

(d) **Change in information.**

(1) The commercial licensee shall notify the Department in writing within fourteen (14) days of any changes in contact information by electronically submitting a change request in accordance with the Department's instructions.

(2) The licensee shall notify the Department in writing no less than fourteen (14) days in advance of any change that may affect the licensee's qualifications for licensure by electronically submitting a change request, along with any relevant documentation, in accordance with the Department's instructions.

(3) In the event of a change for which a licensee does not have prior notice that may affect the licensee's qualifications for licensure, the licensee shall notify the Department immediately upon learning of the change.

(e) **Transfer of license.**

(1) Commercial licenses may not be assigned or otherwise transferred from one person to another person, from one commercial establishment to another, or from one legal entity to another.

(2) Licenses may not be changed from one business type to another.

(f) **Surrender of license.**

(1) A licensee may voluntarily surrender a license to the Department at any time.

(2) If a licensee voluntarily surrenders a license, the licensee shall:

(A) Return the license to the Department;

(B) Submit a report to the Department including the reason for surrendering the license; contact information following the close of business; the person or persons responsible for the close of the business; and where business records will be retained; and

(C) Any medical marijuana remaining in the possession of the licensee shall be disposed of in accordance with OAC 310:681-5-10.

310:681-5-3. Applications

(a) **Application fee.** An applicant for a commercial establishment license, or renewal thereof, shall submit to the Department a completed application on a form and in a manner prescribed by the Department, along with the application fee as established in 63 O.S. § 420A et seq.

(b) **Submission.** Applications for a commercial license will be accepted by the Department no earlier than sixty (60) days from the date that the State Question is approved by the voters of the State of Oklahoma. The application shall be on the Department prescribed form and shall include the following information about the establishment:

(1) Name of the establishment;

(2) Physical address of the establishment;

(3) GPS coordinates of the establishment; and

(4) Phone number and email of the establishment.

(c) **Individual applicant.** The application for a commercial license made by an individual on their own behalf shall be on the Department prescribed form and shall include at a minimum:

(1) The applicant's first name, middle name, last name and suffix if applicable;

(2) The applicant's residence address and mailing address;

(3) The applicant's date of birth;

(4) The applicant's telephone number and email address;

(5) An attestation that the information provided by the applicant is true and correct; and

(6) A statement signed by the applicant pledging not to divert marijuana to any individual or entity that is not lawfully entitled to possess marijuana.

(d) **Application on behalf of an entity.** In addition to requirements of Subsection (c), an application for a commercial license made by an individual on behalf of an entity shall include:

(1) An attestation that applicant is authorized to make application on behalf of the entity:

(2) Full name of organization;

(3) Trade name, if applicable;

(4) Type of business organization;

(5) Mailing address;

(6) An attestation that the commercial entity will not be located on tribal lands;

(7) Telephone number and email address; and

(8) The name, residence address, and date of birth of each owner and each member, manager, and board member, if applicable.

(e) **Supporting documentation.** For a determination that a commercial applicant meets the requirements of 63 O.S. § 420A et seq., each application shall be accompanied by the following documentation:

(1) A list of all persons and/or entities that have an ownership interest in the commercial applicant;

(2) A certificate of good standing from the Oklahoma Secretary of State, if applicable;

(3) An Affidavit of Lawful Presence for each owner;

(4) If a licensed dispensary, proof that the location of the dispensary is a least one thousand (1,000) feet from a public or private school. The distance specified shall be measured in a straight line from any entrance of any public and private school to the nearest point of the location of the dispensary; and

(5) Documents establishing the applicant, and the members, managers, and board members if applicable, and seventy-five percent (75%) of the commercial applicant's ownership interests are Oklahoma residents as established in 63 O.S. § 420A et seq. and OAC 310:681-1-6 (relating to proof of residency); and

(6) Any further documentation the Department determines is necessary to ensure the commercial applicant is qualified under 63 O.S. § 420A et seq. and this Chapter to obtain a commercial license.

310:681-5-4. Inspections

(a) Submission of an application for a medical marijuana processing license constitutes permission for entry to and inspection of the processing licensee's premises during hours of operation and other reasonable times. Refusal to permit such entry or inspection shall constitute grounds for the nonrenewal, suspension, or revocation of a license.

(b) The Department may perform an annual unannounced on-site inspection of a licensed processor's operations to determine compliance with 63 O.S. § 420A et seq., these Rules and, if applicable, food safety/preparation standards.

(c) If the Department receives a complaint concerning a licensed processor's noncompliance with 63 O.S. § 420A et seq. and this Chapter, the Department may conduct additional unannounced, on-site inspections beyond an annual inspection. The Department may refer all complaints alleging criminal activity or other violations of Oklahoma law that are made against a licensed processor to appropriate Oklahoma state or local law enforcement or regulatory authorities.

(d) If the Department discovers what it reasonably believes to be criminal activity or other violations of Oklahoma law during an inspection, the Department may refer the matter to appropriate Oklahoma state or local law enforcement or regulatory authorities for further investigation.
(e) The Department may review any and all records of a licensed processor and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with Department rules and applicable laws.
(f) All commercial licensees shall provide the Department access to any material and information necessary in a reasonable amount of time not to exceed fifteen (15) days for determining compliance with 63 O.S. § 420A et seq. and this Chapter.
(g) If the Department identifies a violation of 63 O.S. § 420A et seq. or this Chapter during an inspection of the licensed processor, the Department shall take administrative action in accordance with 63 O.S.§ 423A and the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 et seq.
(h) Violations shall be corrected within thirty (30) days of receipt of a written notice of deficiencies.
(i) If processor fails to correct the violations within thirty (30) days, the processor will be subject to a fine of $500.00 for each deficiency.

310:681-5-5. [RESERVED]

310:681-5-6. Inventory tracking, records, reports, and audits

(a) **Monthly reports.** Each commercial licensee shall utilize an inventory management system to maintain records and shall complete a monthly report on a form prescribed by the Department. These reports shall be deemed untimely if not received by the Department by the fifteenth (15th) of each month for the preceding month.

(1) Dispensary reports shall include:
(A) The amount of marijuana purchased from a licensed processor in pounds;
(B) The amount of marijuana purchased from a licensed grower in pounds;
(C) The amount of marijuana sold to licensees and the type of licensee;
(D) The amount of marijuana waste in pounds;
(E) If necessary, a detailed explanation of why any medical marijuana product purchased by the licensee cannot be accounted for as having been sold or still remaining in inventory;
(F) Total dollar amount of all sales to medical marijuana patients and caregivers;
(G) Total dollar amount of all taxes collected from sales to medical marijuana patients and caregivers; and
(H) Any information the Department determines is necessary to ensure that all marijuana grown in Oklahoma is accounted for as required under 63 O.S. § 420A et seq.

(2) Grower reports shall include:
(A) The amount of marijuana harvested in pounds;
(B) The amount of marijuana sold to processor licensees in pounds;
(C) The amount of marijuana sold to researcher, dispensary, and processor licensees in pounds;
(D) The amount of drying or dried marijuana on hand;
(E) The amount of marijuana waste in pounds;
(F) If necessary, a detailed explanation of why any marijuana cannot be accounted for as having been sold, disposed of, or maintained in current inventory;
(G) Total dollar amount of all sales to processer, dispensary, and researcher licensees; and
(H) Any information the Department determines is necessary to ensure that all marijuana grown in Oklahoma is accounted for as required under 63 O.S. § 420A et seq.

(3) Processor reports shall include:
(A) The amount of marijuana purchased from grower licensees in pounds;
(B) The amount of marijuana sold to dispensary, processor, and researcher licensees in pounds;
(C) The amount of medical marijuana manufactured or processed in pounds;
(D) If necessary, a detailed explanation of why any marijuana cannot be accounted for as having been purchased, sold, processed, or maintained in current inventory;
(E) The amount of marijuana waste in pounds; and
(F) Any information the Department determines is necessary to ensure that all marijuana grown in Oklahoma is accounted for as required under 63 O.S. § 420A et seq.

(4) Researcher reports shall include:
(A) The amount of marijuana purchased from commercial establishments in pounds;
(B) The amount of medical marijuana used for research;
(C) The amount of marijuana waste in pounds;
(D) If necessary, a detailed explanation of why any marijuana cannot be accounted for as having been purchased, used for research, or maintained in current inventory; and
(E) Any information the Department determines is necessary to ensure that all marijuana grown in Oklahoma is accounted for as required under 63 O.S. § 420A et seq.

(b) **Records.** Pursuant to the Department's audit responsibilities, commercial establishments shall keep a copy of the following records for at least seven (7) years from the date of creation:

(1) Business records, which may include but is not limited to as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers.

(2) If applicable, documents relating to the processing and preparation of medical marijuana products, which may include but is not limited to lab reports, testing records, equipment inspections, training materials, and standard operating procedures.

(3) Documentation of every instance in which medical marijuana was sold, which shall include:

(A) The identification number associated with the receiving license; and

(B) The quantity and type of medical marijuana sold.

(4) Documentation of every instance in which marijuana was purchased, which shall include:

(A) The license number of the selling commercial establishment; and

(B) The quantity and type of medical marijuana purchased.

(5) If researcher, documentation of every instance in which medical marijuana was used for research, including the quantity and type of medical marijuana used.

(c) **Inventory.** Each commercial licensee shall obtain and maintain an electronic inventory management system that:

(1) Documents the chain of custody of all medical marijuana and medical marijuana products;

(2) Establishes ongoing inventory controls and procedures for the conduct of inventory reviews and comprehensive inventories of medical marijuana and medical marijuana products for traceability which shall enable the licensee to detect any diversion, theft, or loss in a timely manner;

(3) Identifies and tracks a licensee's stock of medical marijuana and medical marijuana products from the time the medical marijuana is propagated at the time it is sold to a patient or caregiver;

(4) In event of a serious adverse event or recall, is capable of tracking medical marijuana or medical marijuana product from a patient back to the source of the medical marijuana or medical marijuana product; and

(5) Tracks medical marijuana using an assigned batch number and bar code.

(d) **Audits.** The Department may perform on-site audits of all commercial licensees to ensure the accuracy of the monthly reports and to ensure that all marijuana grown in Oklahoma is accounted for. Refusal to permit the Department entry or refusal to permit the Department to inspect all books and records shall constitute grounds for the nonrenewal, suspension, or revocation of a license.

(1) The Department may review any and all records of a commercial licensee and may require and conduct interviews with such persons or entities and persons affiliated with such licensees, for the purpose of determining compliance with Department rules and applicable laws.

(2) All commercial licensees shall provide the Department access to any material and information necessary in a reasonable amount of time not to exceed fifteen (15) days for determining compliance with 63 O.S. § 420A et seq. and this Chapter.

(3) If the Department identifies a violation of 63 O.S. § 420A et seq. or these rules during an audit of the commercial licensee, the Department shall take administrative action against the licensee in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq.

(4) If the Department receives a complaint concerning a commercial license holder's noncompliance with 63 O.S. § 420A et seq. or these rules, the Department may conduct additional unannounced, on-site audits. The Department may refer all complaints alleging criminal activity or other violations of Oklahoma law that are made against a commercial licensee to appropriate Oklahoma state or local law enforcement or regulatory authorities.

(5) If the Department discovers what it reasonably believes to be criminal activity or other violations of Oklahoma law during an audit, the Department may refer the matter to appropriate Oklahoma state or local law enforcement or regulatory authorities for further investigation.

310:681-5-6.1. Penalties

(a) **Failure to file timely reports.** If a commercial licensee wholly fails to submit a required monthly report and fails to correct such deficiency within 30 days of the Department's written notice, the license shall be revoked subject to Subsection (d).

(b) **Inaccurate reports.** Within any two (2) year period of time, if the Department makes a finding the licensee has submitted one (1) or more reports containing gross errors that cannot reasonably be attributed to normal human error, the following penalties shall be imposed:

(1) First finding of inaccurate report(s): Five thousand dollar ($5,000.000) fine. If said fine is not paid to the Department within thirty (30) calendar days of licensee receiving notice of the fine, the license shall be revoked.

(2) Any additional finding by the Department of inaccurate report(s): Revocation of license.

(c) **Unlawful purchase and sale.** Within any two year period of time, if the Department makes a finding that the licensee has made an unlawful purchase or sale of medical marijuana, the following penalties shall be imposed:

(1) First finding of unlawful purchase(s) or sale(s): Five thousand dollar ($5,000.000) fine. If said fine is not paid to the Department within thirty (30) calendar days after licensee receives notice of the fine, the license shall be revoked.

(2) Any additional finding by the Department of unlawful purchase(s) or sale(s): Revocation of license.

(d) **Noncompliance and criminal activity.** Commercial licenses may be subject to revocation or suspension upon a determination by the Department that the commercial establishment has not complied with 63 O.S. § 420A et seq. or this Chapter, or upon official notification to the Department that the commercial establishment has engaged in criminal activity in violation of Oklahoma law.

(e) **License revocation and suspension.** Procedures for revocation and suspension of licenses are stated in the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq. These

procedures provide for the licensee to be notified of alleged violation(s) of the Department rules and applicable law. These procedures also provide for the licensee to have the opportunity to be present at a hearing and to present evidence in his or her defense. The Commissioner of Health or his or her designee may promulgate an administrative compliance order revoking or suspending the license, dismissing the matter, or providing for other relief as allowed by law. At any time after the action is filed against the commercial licensee, the Department and the licensee may dispose of the matter by consent order or stipulation. Orders are appealable in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq.

310:681-5-7. Tax on retail medical marijuana sales

(a) The tax on retail medical marijuana sales by a dispensary is established at seven percent (7%) of the gross dollar amount received by the dispensary for the sale of any medical marijuana or medical marijuana product. This tax will be collected by the dispensary from the customer who must be a licensed medical marijuana patient or caregiver.

(b) A dispensary shall either hold or obtain an Oklahoma sales tax permit from the Oklahoma Tax Commission in compliance with OAC 710:65- 19-216.

(c) Reports and payments on gross sales, tax collected, and tax due shall be remitted to the Oklahoma Tax Commission by every dispensary on a monthly basis. No additional reporting regarding gross sales, tax collected, and tax due shall be made to the Department.

(d) Dispensary reporting and remittance shall be made to the Oklahoma Tax Commission on a monthly basis. Reports and remittances are due to the Oklahoma Tax Commission no later than the 20th day of the month following the month for which the report and remittances are made.

(e) All dispensaries required to report and remit medical marijuana tax shall remit the tax and file their monthly tax report in accordance with the manner prescribed by the Tax Commission.

(f) The report shall contain the following information:

(1) Dispensary name, address, telephone number and dispensary license number;

(2) Reporting month and year;

(3) Total gross receipts for the preceding month from sales of medical marijuana or any medical marijuana product;

(4) The amount of tax due as described in (a) of this Section; and

(5) Such other reasonable information as the Tax Commission may require.

(g) If a due date for the tax reporting and remittance falls on a Saturday, Sunday, a holiday, or dates when the Federal Reserve Banks are closed, such due date shall be considered to be the next business date.

(h) Pursuant to 63 O.S. § 426, proceeds from the sales tax levied shall first be distributed to the Oklahoma State Department of Health for the annual budgeted amount for administration of the Oklahoma Medical Marijuana Authority Program. All distributions will be made monthly to the Department until full reimbursement is reached for the annual budgeted cost of the program. If tax levies are not sufficient to reimburse the Department for the full annual budgeted cost, then all tax levies collected during the fiscal shall be remitted to the Department.

310:681-5-8. Composition of medical marijuana industry expert board/food safety standards board

(a) The Medical Marijuana Industry Expert Board/Food Safety Standards Board shall be comprised of 12 Oklahoma residents appointed by the Commissioner of Health and shall serve at the pleasure of the Commissioner of Health. Each member should be a marijuana industry expert with unique qualifications related to food safety standards for processing and handling of medical marijuana and may be appointed from areas including, but not limited to, the following:

(1) State marijuana industry association representation;

(2) Laboratory scientist or representative;

(3) Director or designee of the Oklahoma Department of Mental Health and Substance Abuse Services;

(4) Director or designee of the Oklahoma Department of Agriculture, Food and Forestry;

(5) Director or designee of Oklahoma Center for Poison and Drug Information;

(6) Director or designee of the Oklahoma ABLE Commission;

(7) Director or designee of the Oklahoma Board of Pharmacy;

(8) Director or designee of the Oklahoma State Medical Association or Physician;

(9) Director or designee of the Oklahoma Board of Osteopathic Physicians;

(10) Director or designee of the Department of Environmental Quality;

(11) Director or designee Oklahoma Bureau of Narcotics and Dangerous Drugs;

(12) Director or designee of the Oklahoma Board of Medical Licensure;

(13) Designee of any Oklahoma public health agency; or

(14) Food processor/manufacturer.

(b) The Medical Marijuana Industry Expert Board/Food Safety Standards Board (the "Board") shall by August 27, 2018 submit, and the Department shall make available, standards related to the handling and processing of medical marijuana and medical marijuana products. By every July 1 thereafter, the Board shall review, and submit if necessary, recommendations regarding rule promulgation and standards related to the handling and processing of medical marijuana and medical marijuana products.

310:681-5-8.1. Food safety standards for processors

(a) **Purpose.** This Section sets forth the food safety standards that processors must comply with in the preparation, production, manufacturing, processing, handling, packaging, and labeling of edible medical marijuana products.

(b) **Existing law.** This Section does not relieve licensed processors of any obligations under existing laws, rules, and regulations, including 63 O.S. § 1-1101 et seq., OAC 310:257, and OAC 310:260, to the extent they are applicable and do not conflict with 63 O.S. § 420A et. seq.

(1) The sale, offer to sell, dispense or release into commerce of any food or confection under a name, label, or brand when the name, label, or brand either precisely or by slang term or popular usage, is the name, label, or brand of marijuana is not prohibited.

(2) Marijuana used in food shall be considered an additive, a component, and/or an edible substance.

(3) Marijuana shall not be considered a deleterious, poisonous, or nonnutritive substance, and the use of marijuana, alone, in food shall not make such food adulterated or misbranded.

(c) **Updated law.** In the event the Oklahoma Board of Health or the Commissioner of Health amends OAC 310:257 or OAC 310:260, adopts new food safety rules, or incorporates into Oklahoma law updated federal food safety standards, including Title 21 of the Code of Federal Regulations, licensed processors shall comply with such rules to the extent they are applicable and do not conflict with 63 O.S. § 420A et seq. or these rules.

(d) **Board meetings.** The Medical Marijuana Industry Expert Board/Food Safety Standards Board shall meet as regularly as its members deem necessary to review Oklahoma food safety laws and these rules and to take action, including amending and/or adding recommended standards to the Oklahoma Board of Health or the Commissioner of Health.

(e) **Labeling and packaging.** Labels and packages for food containing marijuana shall comply with all applicable requirements in existing Oklahoma law, rules, and regulations, and any laws incorporated therein by reference, to the extent they do not conflict with 63 O.S. § 420A.

(1) Title 21, part 101 of the Code of Federal Regulations ("CFR"), as of August 22, 2018, is hereby incorporated by reference into this Section to the extent it is applicable and does not conflict with 63 O.S. § 420A et seq.

(2) Existing requirements for principal display panels or information panels include:

(A) Name and address of the business;

(B) Name of the food;

(C) Net quantity or weight of contents;

(D) Ingredients list;

(E) Food allergen information; and

(F) Nutrition labeling, if required under 21 CFR § 101.9.

(3) In addition, principal display panels or information panels must contain:

(A) List of cannabis ingredients;

(B) The batch of marijuana;

(C) The strain of marijuana (optional);

(D) THC dosage in milligrams per unit; and

(E) The lot code.

(4) Nutrient content, health, qualified health and structure/function claims must comply with the Food and Drug Administration ("FDA") Food Labeling Guide.

(5) Packaging must contain the statement, "For accidental ingestion call 1-800-222-1222."

(6) All packages and individually-packaged product units, including but not limited to those from bulk packaging, must contain the Oklahoma uniform symbol in clear and plain sight. The Oklahoma uniform symbol must be printed at least one-half inch by one-half inch in size in color.

(7) In order to comply with OAC 310:681-7-1(4) and this Section, a label must contain a warning that states, "Women should not use marijuana or medical marijuana products during pregnancy because of the risk of birth defects or while breastfeeding."

(f) **Recommended HACCP.** A Hazard Analysis and Critical Control Plan ("HACCP"), as set forth under Title 21, Part 120 of the Code of Federal Regulations, shall be recognized as a standardized best practice to ensure that food is suitable for human consumption and that food-packaging materials are safe and suitable. Processors are encouraged to adopt a HACCP to help ensure compliance with existing Oklahoma food safety laws, particularly OAC 310:260-3-6.

(g) **Required testing procedures.** In light of the medical nature of marijuana authorized under 63 O.S. § 420A et seq. and to ensure the suitability and safety for human consumption of food products containing medical marijuana, processors are required to test food products containing medical marijuana for microbials, solvent and chemical residue, metals, pesticide residue, potency, and contaminants and filth in accordance with the following standards and thresholds.

(1) **Frequency.** Processors shall on a quarterly basis test one lot of each type of edible medical marijuana product.

(2) **Allowable thresholds.** Products that fail to meet the thresholds as set forth below must be rejected and/or recalled immediately. In the event of recall, processors shall immediately notify the Department and all commercial establishments to which the recalled product was or may have been sold or transferred of the recall. Upon notification of the recall, the Department should work with dispensaries to notify patients who received the recalled product.

(3) **Retention of test results and records.** Processors shall retain all test results and related records for three (3) years.

(4) **Microbiological testing.**

(A) All products shall be tested for aerobic plate count.

(B) Product test results shall validate that less than one colony forming unit (CFU) per gram of tested material is present for E. coli or Salmonella species or the product shall be rejected and/or recalled.

(C) Products shall be tested for the presence of yeast and molds. Product test results shall validate less than 104 CFU or the product shall be rejected and/or recalled.

(D) Test reports shall include method reference.

(5) **Solvent and chemical residue.**

(A) Food products containing medical marijuana shall be tested for the following solvents to the maximum extent practical:

(i) Acetone < 1,000 ppm
(ii) Benzene < 2 ppm
(iii) Butanes/ Heptanes < 1,000 ppm
(iv) Hexane < 60 ppm
(v) Isopropyl Alcohol < 1,000 ppm
(vi) Pentane < 1,000 ppm
(vii) Propane < 1,000 ppm
(viii) Toluene < 180 ppm
(ix) Total Xylenes (m, p, o-xylenes) < 430 ppm

(B) Test reports shall provide specific data for all listed and detected solvents.

(C) The test report shall list any solvents listed above that could not be tested for.

(D) If the test equipment's Limit of Detection (lowest possible detection limit) is above the specified limit for a solvent, the equipment's Limit of Detection amount will be considered sufficient to exceed safe contamination limits.

(E) If the cannabis concentrate used to make an infused product was tested for solvents and chemical residue and test results indicate the lot was within established limits, then the infused product does not require additional testing for solvents and chemical residue.

(6) **Metals.**

(A) Testing for heavy metals shall include but is not limited to lead, arsenic, cadmium, and mercury.

(B) Test results shall meet the following thresholds:

(i) Lead - max limit < 1ppm
(ii) Arsenic - max limit < 0.4 ppm
(iii) Cadmium - max limit < 0.44 ppm
(iv) Mercury - max limit < 0.2 ppm

(C) If the cannabis concentrate used to make an infused product was tested for metals and test results indicate the lot was within established limits, then the infused product does not require additional testing for metals.

(7) **Pesticide residue.**

(A) Processors shall test all product batches for pesticides; 0.1 ppm or a positive result at the Limit of Detection (equipment's lowest possible detection amount) will be considered to exceed safe residue limits.

(B) Pesticide residue testing shall analyze samples for the presence of chlorinated hydrocarbons, organophosphates, carbamates, pyrethroids, neonicotinoids, acaracides, fungicides, and bactericides to the maximum extent practical.

(C) If the cannabis concentrate used to make an infused product was tested for pesticides and test results indicate the lot was within established limits, then the infused product does not require additional testing for pesticides.

(8) **Potency.** Processors shall test products for and provide results for levels of total THC.

(9) **Contaminants and filth.** Processors shall inspect all products for contaminants and filth.

(A) Contaminants include any biological or chemical agent, foreign matter, or other substances not intentionally added to products that may compromise food safety or suitability.

(B) Processors shall document allowable thresholds for physical contaminants as part of the product test plan. Inspection requirements should be included in the operation's product test plan for third party testing, if applicable.

(C) Inspection records shall indicate a continual process of physical inspection has taken place for all batches.

(h) **Private homes; living or sleeping quarters.**

(1) A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting processing operations.

(2) Living or sleeping quarters located on the premises of a processor such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

310:681-5-9. Standards for handling and processing medical marijuana and medical marijuana products

These rules do not relieve commercial licensees of any obligations under Oklahoma law, statutes, and rules, including 63 O.S. § 1-1101 et seq., 63 O.S. § 1-1401 et seq., the Oklahoma Administrative Code ("OAC") 310:257, and OAC 310:260, to the extent they are applicable and do not conflict with 63 O.S. § 420A et seq.

310:681-5-10. Medical marijuana waste disposal

All medical marijuana waste generated during production, processing and testing must be stored, managed, and disposed of in accordance with these rules and any other applicable Oklahoma statutes and rules, including but not limited to the waste and disposal standards set forth under the Uniform Controlled and Dangerous Substances Act, 63 O.S. § 2- 101 et seq., and the Department of Environmental Quality rules, OAC Title 252.

310:681-5-11. [RESERVED]

310:681-5-12. Marijuana transaction limitations

(a) A single transaction by a dispensary with a patient, or the parent(s) or legal guardian(s) if patient is under eighteen (18) years of age, or caregiver shall be limited to three (3) ounces of marijuana, one (1) ounce of marijuana concentrate, seventy-two (72) ounces of edible medical marijuana products, six (6) mature plants, and/or six (6) seedling plants.

(b) A single transaction between a processor and patient, or the parent(s) or legal guardian(s) if patient is younger than eighteen (18) years of age, for the processing of medical marijuana concentrate shall be limited to one (1) ounce of medical marijuana concentrate.
(c) Commercial establishments shall verify and ensure that all medical marijuana transactions are conducted with medical marijuana patient, caregiver, or commercial license holders and shall take all reasonable steps necessary to prevent the sale or other transfer of medical marijuana to a person or entity who does not hold a valid, unexpired license issued by the Department under 63 O.S. §420A and this Chapter.
(1) Verification of all licenses shall include, at a minimum: name; valid, unexpired license number; and expiration date.
(2) Verification of individual licenses, in addition to the items required in Subsection (c)(1) above, shall include photo of the licensee.
(d) Any transaction not in accordance with this Section will constitute an unlawful purchase and sale as set forth in OAC 310:681- 5-6.1 (relating to penalties).

310:681-5-13. Loss and theft

If a commercial licensee has reason to believe that an actual loss, theft, or diversion of medical marijuana has occurred, the commercial licensee shall notify immediately the Department and law enforcement. The commercial licensee shall provide the notice by attaching and submitting electronically a signed statement that details the estimated time, location, and circumstances of the event, including an accurate inventory of the quantity and type of medical marijuana unaccounted for due to diversion or theft. The notice shall be provided no later than twenty-four hours after discovery of the event.

310:681-5-14. [RESERVED]

310:681-5-15. [RESERVED]

310:681-5-16. [RESERVED]

310:681-5-17. Entry to commercial establishments

No minors under the age of eighteen(18) may enter commercial establishments unless the minor is a patient license holder accompanied by their parent or legal guardian.

310:681-5-18. Prohibited acts

(a) No commercial establishment shall allow the consumption of alcohol, medical marijuana, or medical marijuana products on the premises.
(b) No commercial establishment shall employ any person under the age of eighteen (18).
(c) No dispensary shall allow for or provide the delivery of medical marijuana or medical marijuana products to patient license holders or caregiver's license holders.
(d) No commercial establishment shall engage in false advertising, as prohibited under 63 O.S. §§ 1-1102 & 1-1402.
(e) No commercial establishment shall sell or offer to sell medical marijuana products by means of any advertisement or promotion including any statement, representation, symbol, depiction, or reference, directly or indirectly, which would reasonably be expected to induce minors to purchase or consume marijuana or medical marijuana products.

310:681-5-19. [RESERVED]

SUBCHAPTER 6. COMMERCIAL FACILITIES

310:681-6-1. General security requirements for commercial establishment

(a) Commercial licensees shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft and diversion of marijuana.
(b) Commercial licensees are responsible for the security of all marijuana items on the licensed premises or all marijuana items in their possession during transit.

310:681-6-2. Construction of premises

All commercial establishments shall meet the standards of any applicable state and local electrical, fire, plumbing, waste and building specification codes including but not limited to the codes adopted by the Oklahoma Uniform Building Code Commission as set forth in OAC Title 748, Chapter 20.

310:681-6-3. [RESERVED]

310:681-6-4. [RESERVED]

310:681-6-5. [RESERVED]

310:681-6-6. [RESERVED]

310:681-6-7. [RESERVED]

310:681-6-8. [RESERVED]

310:681-6-9. [RESERVED]

310:681-6-10. [RESERVED]

310:681-6-11. [RESERVED]

SUBCHAPTER 7. PACKAGING AND LABELING

310:681-7-1. Labeling

The following general label and packaging requirements, prohibitions and exceptions apply:

(1) Labels and packages may not be attractive to minors.

(2) Packaging must contain a label that reads: "Keep out of reach of children."

(3) All medical marijuana and medical marijuana products must be packaged in child resistant packages.

(4) Label must contain a warning that states "Women should not use marijuana or medical marijuana products during pregnancy because of the risk of birth defects."

310:681-7-2. Prohibited products

(a) No commercial establishment shall manufacture, process, or offer for sale or consumption any medical marijuana product intended to be attractive to children or minors.

(b) No commercial establishment, other than a licensed dispensary, shall offer for sale any marijuana seedlings or mature plants. No mature plants are authorized in the possession of either a commercial establishment licensee or patient license holder until 60 days after August 27, 2018. No seedlings are authorized in the possession of a commercial establishment license holder until 7 days after August 27, 2018.

SUBCHAPTER 8. LABORATORY TESTING [RESERVED]

310:681-8-1. [RESERVED]

310:681-8-2. [RESERVED]

310:681-8-3. [RESERVED]

310:681-8-4. [RESERVED]

310:681-8-5. [RESERVED]

310:681-8-6. [RESERVED]

310:681-8-7. [RESERVED]

APPENDIX A. [RESERVED]

[OAR Docket #19-679; filed 6-26-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #19-624]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 8. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
340:2-8-1 through 340:2-8-14 [AMENDED]
(Reference WF 19-2A)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162); and Sections 160.103, 164.103, 164.105, 164.501, 164.502, 164.508, 164.514, 164.522, 164.524, 164.526, and 164.530 of Title 45 of the Code of Federal Regulations.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed amendments are amended to: (1) clarify and simplify rules for clients, DHS staff, and the public; (2) remove unnecessary, incorrect, or obsolete information; (3) add more definitions of HIPAA terms, the client's right to rebut a denial of access to his or her PHI, examples of personal representatives, when a minor can act on his or her own behalf, forms used for HIPAA, and legal citations to enhance understanding of DHS HIPAA rules; and (4) update terminology. If the proposed amendments are not implemented, clients and the public may not clearly understand DHS HIPAA rules and DHS staff may misapply the rules.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 8. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) PRIVACY RULE

340:2-8-1. Legal basis,~~and~~ purpose, and hybrid designation

(a) Part 160, Sections 160.101 through 160.552, and Subparts A, Sections 164.102 through 164.106, and E, Sections 164.500 through 164.534 of Part 164 of Title 45 of the Code of Federal Regulations (C.F.R.) constitute the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule~~, which~~that provides protection for the privacy of health information.

(b) The purpose of this Subchapter is to describe the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) privacy policies contained in the HIPAA Privacy Rule. ~~OKDHS~~DHS privacy policies are intended to:

(1) protect clients' medical records and other personal health information;

(2) give clients more control over their protected health information (PHI);

(3) set boundaries on the use and disclosure of PHI; and

(4) hold violators accountable.

(c) Employees who violate ~~OKDHS~~DHS privacy policies are disciplined~~,in accordance with DHS:2-1-7(g)(2)(A)~~ per DHS:2-1-7(i)(2)(A) and may be subject to sanctions set forth by the Department of Health and Human Services.

(d) DHS is designated as a HIPAA hybrid entity.

(1) DHS is a single legal entity comprised of several components, some of which provide HIPAA-covered functions. Therefore, DHS is a hybrid entity that provides both HIPAA-covered and non-covered functions as part of its business operations.

(2) DHS Developmental Disabilities Services, the ADvantage Administration Unit, Office of Inspector General, and Adult and Family Services are designated by DHS as covered components of the hybrid entity, per Section 164.105(a)(2)(iii)(C) of Title 45 of the C.F.R. All other DHS components are not HIPAA-covered.

340:2-8-2. Definitions

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

"Authorization" means, per Section 164.508(c) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 164.508(c)), a document that contains:

(A) a description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

(~~A~~B) the name or other specific identification of the person(s)~~,~~ or class of persons~~,~~ authorized to make the requested use or disclosure;

(~~B~~C) the name or other specific identification of the person(s)~~,~~ or class of persons~~,~~ to whom the Oklahoma

Department of Human Services ~~(OKDHS)~~DHS may make the requested use or disclosure;

(~~C~~D) a description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not~~,~~ or, elects not to~~,~~ provide, a statement of the purpose;

(~~D~~E) an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient ~~if~~when the authorization is for a use or disclosure of protected health information (PHI) for research, including ~~for~~ the creation and maintenance of a research database or research repository;

(~~E~~F) the individual's signature ~~of the individual~~ and date. ~~If~~When the authorization is signed by ~~a~~the individual's personal representative ~~of the individual~~, a description of the representative's authority to act for the individual must ~~also~~ be provided; and

(~~F~~G) the individual's right to revoke the authorization in writing.

"Covered function" means, per 45 C.F.R. § 164.103, a covered entity function of which the performance makes the entity a health plan, health care provider, or health care clearinghouse. Determination of SoonerCare (Medicaid) eligibility and coverage are DHS-covered functions.

"Disclosure" means, per 45 C.F.R. § 160.103, the PHI release to another entity or individual.

"Health care component" means, per 45 C.F.R. § 164.103, a component or combination of components of a hybrid entity designated by a hybrid entity, per 45 C.F.R. § 164.105(a)(2)(iii)(D).

"Health care operations" means, per 45 C.F.R. § 164.501, certain administrative, financial, legal, and quality improvement activities that are necessary to run ~~the organization~~ and ~~to~~ support ~~the~~an organization's core ~~functions of~~ treatment and payment functions. Some common activities include quality assessment activities, case management, care coordination, and fraud and abuse investigations.

"Health information" means, per 45 C.F.R. § 160.103, any information including genetic information, whether verbalized or recorded in any form or medium that:

(A) is created or received by a health care plan, health care provider, health care clearinghouse, public health authority, employer, life insurer, or school or university; and

(B) relates to the past, present, or future:

(i) physical or mental health or condition of an individual;

(ii) provision of health care to an individual; or

(iii) payment for the provision of health care to an individual.

"Hybrid entity" means, per 45 C.F.R. § 164.103, a single legal entity:

(A) that is a covered entity;

(B) whose business activities include both covered- and non-covered functions; and

(C) that designates health care components, per 45 C.F.R. § 164.105(a)(2)(iii)(D).

"Individually identifiable health information" means, per 45 C.F.R. § 160.103, information that is a subset of health information, including demographic information collected from an individual, and:

(A) is created or received by a health plan, health care provider, health care clearinghouse, or employer;

(B) relates to the past, present, or future:

(i) physical or mental health or condition of an individual;

(ii) provision of health care to an individual; or

(iii) payment for the provision of health care to an individual; and

(C) identifies the individual or there is a reasonable basis to believe the information can be used to identify him or her.

"Payment" means, per 45 C.F.R. § 164.501, the ~~various~~ activities ~~of~~undertaken by a:

(A) health plan or health care ~~providers~~provider to obtain ~~payment~~ or ~~be reimbursed~~provide reimbursement for ~~their services. Some common activities include determining eligibility for a plan, adjudicating claims, risk adjustments, billing and collecting activities, medical necessity reviews, and utilization reviews~~ the provision of health care; or

(B) health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan, except as prohibited, per 45 C.F.R. § 164.502(a)(5)(i).

"Personal representative" means, per 45 C.F.R. § 164.502, an individual, who:

(A) is a parent, legal guardian, or legal custodian appointed by a court;

(B) has the authority to act on behalf of a deceased individual or his or her estate;

(C) ~~has been~~is given authority to act on behalf of an individual with regard to health care through a power of attorney, medical directive, or guardianship; or

(D) ~~has been~~is designated by an adult as his or her personal representative with regard to health care. A personal representative is treated the same as the client is treated.

"Privacy notice" means, per 45 C.F.R. § 164.520(b), a form that notifies an individual:

(A) how DHS handles his or her health information~~is handled by OKDHS~~; and

(B) what his or her rights are regarding ~~PHI~~protected health information.

"Protected health information (PHI)" means, per 45 C.F.R. § 160.103, any health-related information that is used to individually identify a person by virtue of its containing one or more individual identifiers, such as name, Social Security number, ~~telephone~~phone number, case number, or postal ~~zip~~Zip code, and applies to information transmitted or maintained in any form or medium, including electronic, paper, or ~~oral~~verbal.

"Treatment" means, per 45 C.F.R. § 164.501, the provision, coordination, or management of health care and related services. This includes consultation between health care providers regarding a client or the referral of a client from one health care provider to another.

~~**"Treatment, payment, operations (TPO)"** means routine uses and disclosures of PHI.~~

"Use" means~~,~~ with respect to PHI, per 45 C.F.R. § 160.103, the sharing, employment, application, utilization, examination, or analysis of ~~such~~ information within an entity that maintains such information.

340:2-8-3. Training

Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) offers ~~two forms of~~online training modules regarding the Health Insurance Portability and Accountability (HIPAA) Privacy Rule and how the regulations relate to specific job functions. Every ~~OKDHS~~DHS employee whose job function is affected by the Privacy Rule is required to complete an available training course.

340:2-8-4. Client ~~privacy~~ rights to access personal health information (PHI)

(a) Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) clients, per Section 164.524 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 164.524), have the right to:

(1) access, inspect, and obtain a copy of their own ~~protected health information (~~PHI~~)~~ in ~~OKDHS~~DHS files or records consistent with federal and state law, except for:

(A) psychotherapy notes that are not specifically released by the originator of the notes; and

(B) information compiled for use in civil, criminal, or administrative proceedings; ~~and~~

~~(C) information that OKDHS believes can cause harm to the client or to any other person. For this exception, clients have the right to have the decision reviewed by a licensed health care professional or other designated staff not directly involved in making the original denial decision;~~

(2) rebut a denial of access to their PHI by requesting a review in writing to the DHS privacy officer. When a client requests a review, the DHS privacy officer promptly acts on his or her request and arranges for the review;

(~~2~~3) receive an accounting of disclosures ~~OKDHS has~~DHS made of their PHI for up to six years prior to the requesting date~~, except for~~ by completing Form 13HI004E, Request for Accounting of Disclosures. This does not include disclosures made for the purposes of treatment, payment, or health care operations activities or of PHI previously authorized by the client for use or disclosure. After receiving Form 13HI004E, DHS staff completes and sends Form 13HI005E, Accounting of Disclosures, to the client within 60-calendar days of receiving the request; and

(~~3~~4) submit complaints if they believe or suspect that ~~OKDHS has~~DHS improperly used or disclosed their PHI. When a client or his or her personal representative submits a complaint, per Oklahoma Administrative Code 340:2-8-9, DHS staff gives the client the DHS privacy officer's name and phone number. The privacy officer:

(A) reviews the complaint;

(B) makes a decision regarding the complaint;

(C) documents the decision; and

(D) informs the client of the decision in writing.

(b) Clients may ask ~~OKDHS~~DHS to take specific actions regarding the use or disclosure of their PHI, per 45 C.F.R. § 164.522, and ~~OKDHS~~DHS may ~~either~~ approve or deny the request. Specifically, clients have the right to request that DHS:

(1) ~~that OKDHS~~ restrict uses and disclosures of their PHI ~~to those activities related to~~for treatment, payment, and operations~~, unless the restriction adversely affects the quality of the client's care or prevents OKDHS from making or obtaining payment for services~~;

(2) ~~to receive information from OKDHS~~provide information by alternative means, such as email,~~mail, e-mail,~~ fax, mail, or ~~telephone,~~phone, or at alternative locations by completing Form 13HI006E, Request for Alternative Means of Communication. DHS terminates the agreement to communicate by alternative means, when:

(A) the client agrees to or requests termination; or

(B) DHS is unable to contact the client by the method requested or at the designated location; and

(3) ~~that OKDHS~~ amend their PHI, per 45 C.F.R. § 164.526 by completing Form 13HI007E, Request for Amendment of Protected Health Information.

(A) When DHS grants the amendment, DHS staff:

(i) makes the appropriate amendment to the client's PHI;

(ii) provides timely notice to the client that the amendment was accepted; and

(iii) seeks the client's agreement to notify other relevant persons or agencies with whom DHS has cause to share the amended information.

(B) DHS denies the client's request for amendment, when the information:

(i) did not originate from DHS, unless the client provides a reasonable basis to believe that the originator of such information is no longer available to act on the requested amendment; or

(ii) is accurate and complete.

(C) When DHS staff denies the amendment, a written denial is sent to the client explaining the reason for the denial within 60-calendar days of the request for an amendment. The denial explains the client's right to submit a written statement disagreeing with the denial and how to file the statement. When the client files a statement disagreeing with the denial, DHS staff has the right to complete a written rebuttal to the client's statement and sends a copy of the rebuttal to the client.

(c) Clients have the right to receive Form ~~HIPPA-1~~13HI001E, Privacy Notice.

340:2-8-5. Privacy officer

(a) The Oklahoma Department of Human Services ~~(OKDHS) has~~(DHS) designated a privacy officer to perform the required functions,~~as specified in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule~~ per Section 164.530 of Title 45 of the Code of Federal Regulations. The contact information is: Oklahoma Department of Human Services, Privacy Officer, ~~P.O.~~PO Box ~~53025~~25352, Oklahoma City, ~~OK 73152~~Oklahoma 73125.

(b) The privacy officer is responsible for:

(1) ~~the development and implementation of OKDHS~~developing and implementing DHS privacy ~~policies~~policy;

(2) making decisions regarding the use and or disclosure of protected health information (PHI) when requested for the purpose of:

(A) judicial and administrative proceedings;

(B) law enforcement investigations;

(C) research; and

(D) marketing;

(3) reviewing a denial for a client's access to his or her own PHI for reasons indicated in ~~OAC~~Oklahoma Administrative Code 340:2-8-4(a)(1)(C), and taking appropriate action following the review;

(4) receiving complaints regarding the use or disclosure of PHI from external and internal sources, and taking the appropriate action following the review;

(5) ensuring proper business associate agreements contain the appropriate language and provisions as required by the Privacy Rule; and

(6) receiving complaints regarding business associate activities or practices, and taking appropriate action following the review.

340:2-8-6. Uses and disclosures without authorization

Unless prohibited or limited by federal or state laws, per Section 164.512 of Title 45 of the Code of Federal Regulations, Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) staff may use or disclose protected health information (PHI) without written authorization,~~for the circumstances explained in~~ per (1) through (11) of this Section.

(1) **Individual access.** ~~OKDHS~~DHS staff may disclose information to individuals who ~~have requested~~request disclosure of their own PHI,~~in accordance with OAC~~ per Oklahoma Administrative Code 340:2-8-4(a)(1).

(2) **Required by law.** ~~OKDHS~~DHS staff may use or disclose PHI without authorization ~~if~~when the law requires such disclosure and the use or disclosure complies with, and is limited to, the relevant requirements of such law.

(3) **Treatment, payment, or health care operations.** ~~OKDHS~~DHS staff may use or disclose PHI without authorization:

(A) for its own treatment, payment, or health care operations; or

(B) to another covered entity or health care provider for the payment activities of the entity that receives the PHI~~;~~

~~(C) to another covered entity for the health care activities of that entity, if:~~

~~(i) both that entity and OKDHS have or have had a relationship with the individual who is the subject of the PHI; and~~

~~(ii) the PHI pertains to such relationship.~~

(4) **Psychotherapy notes.** ~~OKDHS~~DHS staff may use or disclose psychotherapy notes generated by ~~OKDHS~~DHS:

(A) in training programs where students, trainees, or practitioners in mental health services learn, under supervision, to practice or improve their skills;

(B) when a health oversight agency uses or discloses in connection with oversight of the originator of the notes; or

(C) to the extent authorized under state law to defend ~~OKDHS~~DHS in a legal action or other proceeding brought by ~~the~~an individual.

(5) **Public health activities.** ~~OKDHS~~DHS staff may disclose an individual's PHI to appropriate entities or persons for governmental public health activities and purposes~~,~~ including, but not limited to, a:

(A) governmental, public-health authority ~~that is~~ authorized by law to collect or receive the PHI for the purpose of preventing or controlling disease, injury, or disability. This includes reporting vital events, such as:

(i) ~~birth or death~~births and deaths; or

(ii) abuse or neglect of a vulnerable adult;

(B) governmental, public health authority~~,~~ or other appropriate government authority~~, that is~~ authorized by law to receive ~~report of~~ child abuse or neglect reports; or

(C) person who may have been exposed to a communicable disease~~,~~ or may be at risk of contracting or spreading a disease or condition, ~~if OKDHS~~when DHS is authorized by law to notify such person as necessary in conducting a public health intervention or investigation.

(6) **Health oversight activities.** ~~OKDHS~~DHS staff may disclose PHI for health oversight activities authorized by law, including audits; civil, criminal, or administrative investigations, prosecutions, or actions; licensing or disciplinary actions; SoonerCare (Medicaid) fraud; or other activities necessary for oversight.

(7) **Judicial and administrative proceedings.** Unless prohibited by applicable federal and state law, ~~OKDHS~~DHS staff may disclose PHI for judicial or administrative proceedings as required by law, in response to ~~an~~a court order~~of a court~~, a subpoena, a discovery request, or other lawful process.

(8) **Law enforcement purposes.** ~~OKDHS~~DHS staff discloses PHI only when required by federal or state laws.

(9) **Deceased persons.** ~~OKDHS~~DHS staff discloses PHI to a coroner or medical examiner only when required by federal or state laws.

(10) **Organ or tissue donation.** ~~If~~When a client is an organ donor, ~~OKDHS~~DHS staff may disclose PHI to an entity that participates in transplantation activities.

(11) **To avert a serious threat to health or safety.** ~~OKDHS~~DHS staff discloses PHI,~~if~~ when:

(A) ~~OKDHS~~he or she believes in good faith that the PHI is necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public; and

(B) the report is disclosed to a person(s) reasonably able to prevent or lessen ~~the~~a serious or imminent threat to the health or safety of a person or the public, including ~~to~~ the target of the threat.

340:2-8-7. Authorization

(a) A valid authorization is required to disclose protected health information (PHI) unless it is:

(1) for the purposes of treatment, payment, or health care operations; or

(2) listed ~~specifically~~ in Oklahoma Administrative Code (OAC) 340:2-8-6.

(b) An authorization is considered valid,~~if~~ when:

(1) it contains the elements described,~~at~~ per Section 164.508(c) of Title 45 of the Code of Federal Regulations and OAC 340:2-8-2;

(2) the expiration date has not passed; and

(3) the authorization is signed by the client, parent, guardian, or ~~court-ordered~~client's personal representative~~of the client~~.

(c) A client may only revoke an authorization ~~if the revocation is~~ in writing.

340:2-8-8. Disclosures to friends and relatives

(a) ~~If~~When the client ~~has been~~is informed in advance and ~~has been~~ given the opportunity to ~~either~~ agree or to refuse or restrict the disclosure of protected health information (PHI), Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) staff may disclose ~~protected health information (~~PHI~~)~~ to the client's friends and relatives ~~of the client~~ to the extent ~~allowed by~~ the client allows. The disclosure must only reveal PHI that directly relates to such person's involvement with the client's care or payment for such care.

(b) ~~If~~When the client is not present, or the opportunity to object to the disclosure cannot practicably be provided due to the client's incapacity or an emergency situation~~,OKDHS~~ DHS staff determines, using professional judgment, ~~whether~~if the disclosure is in the client's best ~~interests~~interest. ~~If~~When disclosure is in the client's best interest, ~~then~~ the minimum necessary disclosure may be made. ~~If~~When disclosure is not in the client's best interest, ~~then~~ no disclosure is made.

(c) ~~Oral~~Verbal permission to disclose PHI to friends and relatives is not sufficient when the client is referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services. Written authorization is required under those circumstances.

340:2-8-9. Personal representative

(a) A personal representative must be authorized under state law or by the client to act ~~on~~in the client's behalf ~~of the client~~ with respect to use or disclosure of protected health information (PHI).

(1) Personal representatives may include:

(A) an individual granted durable power of attorney for health care;

(B) an individual appointed as a health care proxy;

(C) a court appointed guardian who has authority over the care and management of the person, estate, or both;

(D) a court appointed executor or administrator of a deceased individual's estate;

(E) an Oklahoma Department of Human Services (DHS) Adult Protective Services employee investigating the abuse or neglect of an alleged vulnerable adult;

(F) a DHS Child Welfare Services employee who is responsible for a child in DHS custody; or

(G) a DHS Office of Client Advocacy employee.

(2) A parent, legal guardian, or legal custodian appointed by a court may act as a minor's personal representative except when the minor acts on his or her behalf, per (A) through (G) of this paragraph. A minor acts on his or her own behalf when he or she:

(A) is married;

(B) has a dependent child;

(C) is emancipated;

(D) is separated from his or her parents or legal guardian and is not supported by them;

(E) is or was pregnant; or

(F) is seeking confidential treatment, diagnosis, or prevention services for a communicable disease or drug or alcohol use or abuse.

(b) ~~Oklahoma Department of Human Services (OKDHS)~~DHS treats a personal representative the same as the client is treated, unless:

(1) there is reasonable belief that the client ~~has been~~was or may be subjected to domestic violence, abuse, or neglect by the personal representative; or

(2) by using professional judgment, it is determined that it is not in the client's best interest ~~of the client~~ to treat the person as a personal representative.

340:2-8-10. Minimum necessary standards

The Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) limits ~~request~~requests for, use of, and disclosure of protected health information (PHI) to that which is reasonably necessary to accomplish the intended purpose of the use,~~or~~ disclosure, or request, per Section 164.502(b) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 164.502(b)). This minimum necessary standard ~~will~~is not ~~be~~

used to impede the essential activities of treatment, payment, or health care operations.

(1) The minimum necessary standard applies to:

(A) the use of PHI within ~~OKDHS~~DHS. Employees who:

(i) do not need PHI to perform their job duties must not access PHI; and

(ii) need PHI to perform their job duties must access PHI to the least extent necessary;

(B) disclosure of PHI to a third party in response to a request; and

(C) the request of PHI from another covered entity.

(2) The minimum necessary standard does not apply to disclosures made:

(A) ~~disclosures~~to or requests by a health care provider for treatment;

(B) ~~disclosures made~~to the individual;

(C) ~~disclosures made in accordance~~with a valid authorization, per 45 C.F.R. § 164.508(c);

(D) ~~disclosures made~~to the United States Secretary of Health and Human Services for the purposes of compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule; or

(E) for uses ~~or disclosures that are~~ required by law.

340:2-8-11. Safeguarding protected health information

(a) ~~If~~When Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) staff is familiar with the person or entity requesting protected health information (PHI), ~~OKDHS~~DHS verifies the authority of the person or entity to receive the information. ~~If OKDHS~~When DHS staff is not familiar with the person or entity requesting PHI, ~~OKDHS~~ DHS staff verifies the identity and authority of the person or entity to receive the information, per Section 164.514(h) of Title 45 of the Code of Federal Regulations.

(b) ~~OKDHS~~DHS staff must exercise care to avoid incidental disclosures of PHI through ~~oral~~ verbal communications.

(c) Appointment reminders may be left on answering machines and voice mail systems, unless the client ~~has requested~~completes Form 13HI006E, Request for Alternative Means of Communication, or provides a written statement requesting an alternate means of communication.

(d) ~~Faxing PHI is allowed~~DHS staff may fax PHI when the PHI is sent with Form 13HI008E, Health Information Coversheet, and:

(1) only the minimum necessary PHI is sent;

(2) the information is not sensitive or, when sensitive, it is an emergency situation; and

(3) ~~the information is accompanied by Form HIPAA-8, Health Information Fax Cover Sheet; and~~

~~(4)~~ staff makes reasonable efforts ~~are made~~ to ensure the fax transmission is sent to the correct destination.

(e) PHI is only photocopied when necessary for treatment, payment, or health care operations~~,~~ when authorized by the client or the client's personal representative~~,~~ or when required by law.

(f) ~~PHI must be discarded in accordance with OAC 340:2-21-35.~~

~~(g) Client's~~PHI placed in case records ~~and other forms of PHI~~or other records must be filed and kept safe from unauthorized access.

(~~h~~g) Clients and visitors must be appropriately escorted in a secured area to ensure ~~there is not~~ unauthorized PHI access ~~to PHI~~does not occur.

(~~i~~h) Computer monitors must be positioned to prevent unauthorized PHI observation or access~~. Unattended~~ and unattended computers must be returned to a password protected screen saver.

(~~j~~i) Correspondence, including ~~e-mail~~email and fax~~,~~ that includes PHI is allowed ~~if~~when limited to the minimum necessary standard, per Oklahoma Administrative Code 340:2-8-10.

340:2-8-12. Business associate

(a) A business associate, per Section 160.103 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 160.103), is defined as an individual or entity who:

(1) performs on behalf of the Oklahoma Department of Human Services ~~(OKDHS)~~ (DHS), any function or activity involving the use or disclosure of protected health information (PHI); and

(2) is not a member of the ~~OKDHS~~DHS workforce.

(b) The definition of "function or activity" includes:

(1) claims processing or administration;

(2) data analysis and data processing;

(3) utilization review;

(4) quality assurance; and

(5) billing, actuarial accounting, and other financial services.

(c) ~~OKDHS~~DHS discloses a client's PHI to a business associate, and allows a business associate to create or receive PHI on behalf of ~~OKDHS~~DHS.

(d) ~~OKDHS~~DHS enters into a contractual agreement with a business associate, per 45 C.F.R. § 164.504(e). The contract includes the appropriate language and provisions required by the federal Health Insurance Portability and Accountability Act ~~(HIPAA)~~ Privacy Rule regarding the proper use and disclosure of PHI.

340:2-8-13. Uses and disclosures for research or marketing purposes

~~(a)~~ Per Section 164.508(a) of Title 45 of the Code of Federal Regulations, the Oklahoma Department of Human Services ~~(OKDHS)~~ must obtain a valid authorization for any use or disclosure of protected health information (PHI) to outside entities for: research ~~purposes~~or~~.~~

~~(b) OKDHS must obtain a valid authorization for any use or disclosure of PHI for~~ marketing purposes~~unless the communication is in the form of face-to-face contact made by OKDHS staff~~.

340:2-8-14. Privacy complaints

(a) A client or employee wishing to file a complaint regarding the use or disclosure of protected health information (PHI)

is instructed to contact the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) privacy officer.

(b) A client or employee who requests an alternative means of filing a complaint regarding the use or disclosure of PHI~~,~~ is instructed to contact the ~~federal~~United States Department of Health and Human Services.

(c) ~~OKDHS will~~Per Section 160.316 of Title 45 of the Code of Federal Regulations, DHS must not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for:

(1) filing a privacy violation complaint;

(2) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing conducted by a government enforcement agency; or

(3) opposing any act or practice made unlawful by the Health Insurance Portability and Accountability Act ~~(HIPAA)~~ Privacy Rule, provided the manner of opposition does not involve a PHI disclosure~~of PHI~~.

[OAR Docket #19-624; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #19-625]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 25. ~~Office of General Counsel~~Legal Services
340:2-25-1 [AMENDED]
340:2-25-2 [REVOKED]
(Reference WF 19-2D)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed amendments to Chapter 2, Subchapter 25 amend the rules to: (1) remove language regarding the DHS Commission as a constitutional and statutory authority and amend the legal authority; (2) make non-substantive changes to improve rule clarity; and (3) revoke an obsolete Section.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 25. ~~OFFICE OF GENERAL COUNSEL~~LEGAL SERVICES

340:2-25-1. Purpose and legal authority

(a) The constitutional and statutory authority of the Oklahoma Department of Human Services (DHS) Director for hiring attorneys and establishing Legal Services (LS) is included in the Oklahoma Constitution Article 25, and Section 236 of Title 56 of the Oklahoma Statutes (O.S. 56 § 236) and O.S. 74 §§ 18c and 20f(A).

(b) ~~The purpose of this Subchapter is to describe the functions and responsibilities of the Legal Unit in the Office of General Counsel as well as client/employee responsibilities in legally related matters. The Legal Unit~~LS is composed of the General Counsel, deputy general counsel and assistant general counsels, legal assistants~~, legal~~ and secretaries, and ~~other~~ support staff. ~~The Legal Unit~~

(c) LS provides consultation, legal opinions, representation, and other legal services to ~~the Oklahoma Human Services Commission, the~~DHS, the DHS Director,~~of Human Services, and the Department of Human Services~~ and DHS employees.

(d) ~~In addition, in specific situations, the Legal Unit~~LS may represent present and former employees sued in their individual ~~capacity~~capacities in legal actions arising from conduct while in the scope of their DHS employment~~with the Department of Human Services~~. ~~The Legal Unit~~

(e) LS may ~~provide, upon request, two separate functions in regard to legislation. The Legal Unit may~~ review legislation ~~already~~ drafted by a program or division or ~~may~~ draft legislation ~~based upon a request~~requested by a program or division.

340:2-25-2. Legal authority [REVOKED]

~~The constitutional and statutory authority of the Commission and Director for hiring attorneys and establishing a Legal Division, is included in Okla. Const. Art. 25, "1-4, 56 O.S. 1991 and Supp. 1993, "233-236, and 74 O.S. 1991 and Supp. 1993, "18c and 20f(A).~~

[OAR Docket #19-625; filed 6-17-19]

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

[OAR Docket #19-626]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 14. Conditions Of Eligibility - Immunizations
340:10-14-1 [AMENDED]
(Reference WF 19-10)
AUTHORITY:
Director of Human Services; Sections 162, 230.52, 230.56, and 230.65 of Title 56 of the Oklahoma Statues, and Section 608 of Title 42 of the United States Code.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed amendments to Chapter 10, Subchapter 14 amend the rule to: (1) change the form used to exempt children from required immunizations to the Oklahoma State Department of Health (OSDH) official form; (2) clarify that good cause is determined by OSDH; and (3) add legal and rule citations.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 14. CONDITIONS OF ELIGIBILITY - IMMUNIZATIONS

340:10-14-1. Immunizations

(a) **Scope.** Sections 230.52, 230.56, and 230.65 of Title 56 of the Oklahoma Statutes and Section 608 of Title 42 of the United States Code address Temporary Assistance for Needy Families (TANF) recipients' responsibility to immunize their children. Immunization of minor children two months of age ~~or~~and older is a variable condition of eligibility that must be addressed before certification and, at renewal. The parent or caretaker relative must provide proof ~~of~~that each child is current ~~immunization~~on age- appropriate immunizations within 90-calendar days of certification ~~or~~and when additional immunizations become due in the future unless he or she ~~re-quest~~requests and, is approved for a good cause exemption, per (b) of this Section. Refer to the Oklahoma State Department of Health (OSDH) website at www.ok.gov/health/ for current immunization schedules and vaccination information. Proof of immunization includes providing a copy of the vaccination record issued by the local health official or a licensed physician.

(1) ~~If~~When the minor child attends a licensed child care center or home or a parochial, private, or public school, proof of current immunization is not required as each of these entities require proof of immunization or a signed ~~certificate of exemption~~OSDH Form 216-A, Certificate of Exemption, on file with ~~the Oklahoma State Department of Health (~~OSDH~~)~~ as a condition of attendance.

(2) When ~~required, if~~ the child does not attend a facility per (a)(1) of this Section and ~~parent or caretaker relative~~the client fails to provide proof of current immunization within 90-calendar days without good cause, the worker reduces the TANF cash assistance ~~must be reduced~~ by 25~~%~~ percent of the payment standard, per Oklahoma Administrative Code 340:10-3-57(g). The worker removes the 25~~%~~ percent penalty the next effective date after the ~~parent or caretaker relative~~client provides proof of current immunization.

(b) **Good cause.** ~~A parent or caretaker relative can~~The client may request good cause because of the child's medical condition~~of the child~~, the ~~religious affiliation of the child,~~ immunizations are contrary to the child's religion, or the client's personal objection~~of the parent or caretaker relative~~.

(1) ~~Good~~Before good cause ~~is~~may be approved,~~when a~~ the client must return a completed Form 216-A, signed by:

(~~1~~A) a physician~~certifies on Form 08TA017E, Immunization Certificate of Exemption~~, certifying that there is a medical contraindication;

(~~2~~B) a religious leader, parent, or caretaker relative,~~certifies on Form 08TA017E~~ certifying that immunizations are contrary to the teachings of the child's religion; or

(~~3~~C) the parent or caretaker relative,~~certifies on Form 08TA017E~~ certifying that immunizations are contrary to the parent's or care relative's beliefs~~of the parent or caretaker relative~~.

(2) When the worker receives a completed Form 216-A, he or she sends the form to the OSDH address on the form for a good cause determination. Good cause is not approved until OSDH returns an approved Form 216-A to the worker.

[OAR Docket #19-626; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 15. STATE SUPPLEMENTAL PAYMENT AND THE SUPPLEMENTAL SECURITY INCOME-DISABLED CHILDREN'S PROGRAM

[OAR Docket #19-627]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. State Supplemental Payment
340:15-1-2 [AMENDED]
340:15-1-4 through 340:15-1-6 [AMENDED]
Subchapter 3. Supplemental Security Income-Disabled Children's Program
340:15-3-1 [AMENDED]
(Reference WF 19-15)
AUTHORITY:
Director of Human Services; and Sections 17, 71, 162, 164, 168, and 183 of Title 56 of the Oklahoma Statutes (O.S. 56 §§ 17, 71, 162, 164, 168, and 183); Sections 1382 and 1382b of Title 42 of the United States Code; and Section 504 of the Social Security Act.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed amendments to Chapter 15, Subchapter 1 amend the rules to: (1) change terminology regarding the definition of an eligible couple; (2) add timely application processing standards; (3) add information regarding income calculation at application and when staff must verify income and resource changes for individuals receiving Supplemental Security Income (SSI); (4) separate reasons a person is or is not eligible for a State Supplemental Payment (SSP); (5) add more reasons a person is not eligible to receive a SSP; (6) clarify income eligibility determinations for SSP; (7) add information that a child ineligible for SSP may be eligible for SoonerCare (Medicaid) under the Tax Equity and Fiscal Responsibility Act of 1982 known as TEFRA; (8) update terminology; (9) clarify and simplify language; (10) remove obsolete and unnecessary language; and (11) update and add policy and legal citations.

The proposed amendments to Chapter 15, Subchapter 3 amend the rules to: (1) add information regarding a child's eligibility to receive SSI-Disabled Children's Program (SSI-DCP) services when the child is in state custody and the Oklahoma Department of Human Services (DHS) retains the SSI payment; (2) remove diapers from services provided through SSI-DCP funds; (3) change which Adult and Family Services (AFS) staff is responsible for sending a denial to an SSI-DCP request and the form used to deny the request; (4) add respite voucher used to request SSI-DCP; (5) add a requirement that a respite provider must be at least 18 years of age; and (6) add a legal citation.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 1. STATE SUPPLEMENTAL PAYMENT

340:15-1-2. Definitions

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

"Countable income" means the total unearned income plus the net earned income. The net earned income is gross earned income minus the $20 general income exclusion, ~~minus~~ $65 work exclusion, ~~minus~~and one-half of the remainder. For ~~additional exemptions for~~ individuals who are blind, refer to Oklahoma Administrative Code (OAC)~~317:35~~ 317:35-5-42(d)(6), for additional exemptions.

"Disabled individual" means a person who meets the same definition, per Section 1382c(a)(3) of Title 42 of the United States Code that the Social Security Administration uses in determining eligibility for Supplemental Security Income disability benefits.

"Earned income" means income ~~in cash earned by an individual through the receipt of~~ the person receives from wages, ~~salary~~salaries, ~~commission~~commissions, or ~~profit~~profits from activities ~~in which~~ he or she is engaged in, as a self-employed individual or as an employee.

"Eligible couple" means ~~a husband and wife~~two persons married to each other who are both aged, blind, or disabled and meet the income and resource standard for a money payment, per Oklahoma Department of Human Services (DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedules VIII.A and D.

"Eligible individual" means a person who is ~~single~~ aged, blind, or disabled and meets the income and resource standard for a money payment, per DHS Appendix C-1, Schedules VIII.A and D.

"Eligible individual with essential spouse" means an eligible individual ~~has~~living with a spouse who is not aged, blind, or disabled but has been continuously included in the case ~~since~~ prior to 1974. The couple must ~~also~~ meet the income and resource standard, per DHS Appendix C-1, Schedule VIII.A and D.

"Eligible individual with ineligible spouse" means an eligible individual ~~has~~living with a spouse who is not aged, blind, or disabled and does not meet the definition of an essential spouse. The couple must ~~also~~ meet the income and resource standard, per DHS Appendix C-1, Schedule VIII.A and D.

"Eligible individual with ineligible spouse and dependent child" means a married couple who meets the definition of an eligible individual ~~and~~with an ineligible spouse that have a child younger than 18 years of age with the proper degree of

relationship residing in the home full-time. The couple must meet the income and resources standard, per DHS Appendix C-1, Schedule VIII.A and D.

"Minor blind or disabled individual" means a child younger than 18 years of age, who is blind or disabled and meets the income and resource standard for a money payment, per DHS Appendix C-1, Schedules VIII.C and D.

340:15-1-4. State Supplemental Payment (SSP) plan

The ~~State Supplemental Payment (~~SSP~~)~~ plan for ~~the~~ aged, blind, or disabled persons encompasses the requirements listed in (1) through (11) of this ~~subsection~~Section.

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

(2) **Financing.** The State of Oklahoma provides all ~~the money for financing~~funding for the SSP Program.

(3) **Single-state agency.** The SSP Program is administered by the Oklahoma Department of Human Services ~~(OKDHS) with an office in each county in the, operating under rules adopted by the Oklahoma Commission for Human Services (Commission)~~DHS Adult and Family Services, in county offices throughout the state.

(4) **Fair hearings.** An SSP applicant or recipient ~~of SSP~~adversely affected by a DHS decision is provided an opportunity for a fair hearing, per Section 168 of Title 56 of the Oklahoma Statutes (56 O.S § 168). Adverse effects may include, when the applicant or recipient:

(A) ~~the application~~is denied benefits or the application is not acted upon ~~with reasonable promptness~~within 30-calendar days for persons categorically related to Aid to the Aged, or 60-calendar days for persons categorically related to Aid to the Blind or Disabled;

(B) ~~he or she is dissatisfied~~disagrees with the approved payment amount~~of his or her payment~~; or

(C) ~~he or she~~disagrees with any ~~other~~ action taken ~~in regard to~~regarding his or her payment.

(5) **Proper and efficient administration.** ~~OKDHS~~DHS operates under the State Merit System ~~which~~that establishes and maintains personnel standards on a merit basis for certain state agencies, including ~~OKDHS~~DHS, per 56 O.S § 26.17. ~~Employees of OKDHS engaged in the administration of the Combined State Plan are covered by the Merit System.~~

(6) **Safeguarding ~~of~~ information.** ~~In accordance with Section 183 of Title 56 of the Oklahoma Statutes~~Per 56 O.S § 183 and Oklahoma Administrative Code (OAC) 340:1-1-20 and 340:65-1-2, ~~OKDHS~~DHS restricts the use ~~of~~ or disclosure of information concerning SSP applicants and recipients to purposes directly connected with ~~the~~SSP program administration~~of this program~~.

(7) **Right to apply.** A person has the right to:

(A) ~~make application~~apply for SSP and any ~~category of assistance~~other benefit he or she chooses;

(B) expect an investigation of eligibility; and

(C) expect a ~~reasonably prompt~~ decision ~~in regard to his or her~~regarding the SSP application within 30-calendar days for persons categorically related to Aid to the Aged or 60-calendar days for persons categorically related to Aid to the Blind or Disabled.

(8) **Assistance under only one program.** An eligible ~~person can have his or her~~person's needs may be included in only one cash assistance benefit, either SSP or Temporary Assistance for Needy Families (TANF)~~benefit~~.

(9) **Standards for determining eligibility and payment amount~~of payment~~.** ~~Uniform policies for determination of eligibility and the amount of payment are provided in~~Refer to OAC 340 Chapters 15 and 65 for SSP eligibility determination rules and ~~OKDHS~~DHS Appendix C-1, Maximum Income, Resource, and Payment Standards for SSP payment amounts.

(A) SSP standards are based on the mandatory "Pass-Along Provision" of Section 1618 of the Social Security Act ~~which~~(Section 1382g of Title 42 of the United States Code) that requires states to pass along cost of living adjustments (COLA) in Supplemental Security Income (SSI) benefits. ~~The Commission approves adjustments in~~DHS adjusts individual ~~payments~~payment amounts during the calendar year, as needed, to maintain total SSP expenditures for SSP in a calendar year at the same level as the total expenditures ~~for SSP~~ in the previous year.

(B) Maximum income and resource standards for persons who are aged, blind, or disabled are based on the federal benefit rates (FBR) shown on ~~OKDHS~~DHS Appendix C-1, Schedule VIII.

(i) Countable income for SSP must be less than 100~~%~~ percent of the FBR, plus the maximum SSP amount.

(ii) Countable income must be equal to, or less than 300~~%~~ percent of the FBR for certain persons who, since December, 1973:

(I) were approved for care and continuously living in a licensed Title XIX nursing care facility, intermediate care facility (ICF), or ICF for ~~the mentally retarded (ICF/MR)~~individuals with intellectual disabilities (ICF-IID);

(II) have continuously received Home and Community-Based Waiver Services for the ~~Mentally Retarded~~intellectually disabled; or

(III) were ~~patients~~ 65 ~~or~~years of age and older and have continuously resided in a mental hospital.

(iii) Countable income for deeming income to a minor child who is blind or disabled must be less than 100~~%~~ percent of the FBR.

(iv) Maximum resources must be equal to, or less than 100~~%~~ percent, of the SSI resource standards.

(10) **Income and resources.** The ~~purpose of the~~ SSP purpose is to supplement a person's income~~the person is receiving~~. ~~OKDHS~~DHS, in determining need for an aged, blind, or disabled person, ~~takes into consideration any~~considers the person's available income and resources,~~of the person in accordance with rules at~~ per

OAC 317:35-5-41 and 317:35-5-42, and federal and state law.

(A) To determine income eligibility at application, the worker calculates the person's actual earned and unearned income received or expected to be received during the application month and compares it to the maximum income standard, per DHS Appendix C-1, Schedule VIII.A.

(B) When the person receives SSI, the worker only verifies changes in income and resources that occurred since the Social Security Administration (SSA) verified the person's income and resources:

(i) at SSI approval;

(ii) at the most recent SSI review; or

(iii) when questionable information is received indicating the person has income or resources not considered by SSA.

(C) ~~In accordance with Section 15 of Title 7 of the Oklahoma Statutes, the~~The first $500 of monthly earned income is disregarded for blind persons in addition to the usual earned income disregards described at OAC 317:35-5-42(d)(1), per 7 O.S. § 15.

(11) **Civil rights.** The SSP Program is administered in accordance with the provisions of Title VI of the Civil Rights Act.

340:15-1-5. State Supplemental Payment (SSP)

(a) **Eligibility for payment.** ~~An~~Per Section 164 of Title 56 of the Oklahoma Statutes (O.S. 56 § 164), an individual is eligible for a ~~State Supplemental Payment (~~SSP~~) if~~ when he or she is, or would be, eligible for Supplemental Security Income (SSI) because of age or disability,~~and~~ is not ineligible per (b) of this Section, meets all other conditions of eligibility~~;~~:

(1) ~~is not a resident of a public facility operated by an entity of government, such as any correctional, mental health, nursing care, or juvenile facility;~~

~~(2) is not a long term, over 30 days, patient in a psychiatric facility or a psychiatric unit of an acute care hospital;~~

~~(3)~~ has countable income, including SSI, that is less than the SSP need standard on Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.A;

(~~4~~2) was, and remains, approved for care in a licensed Title XIX nursing care facility since December, 1973, and retains eligibility for a mandatory SSP. ~~See OKDHS~~Refer to Appendix C-1, Schedule VIII.B., for the mandatory supplement standard;

~~(5) is not a child in OKDHS custody for whom out-of-home care is paid by OKDHS;~~

(~~6~~3) is a resident in the Oklahoma School for the Blind or the Oklahoma School for the Deaf~~and meets all other eligibility requirements~~;

(~~7~~4) is ineligible for SSI based on income; but has income less than the SSP maximum, ~~and meets all other conditions of eligibility~~per DHS Appendix C-1, Schedule VIII.A; or

(5) meets resource standards, per DHS Appendix C-1, Schedule D;~~or~~ and

(~~8~~6) takes all appropriate steps to obtain other benefits within 30-calendar days after he or she is notified of his or her potential eligibility.

(b) **Ineligible for payment.** An individual is not eligible for SSP when he or she:

(1) is a resident of a public facility operated by a government entity, such as a correctional, mental health, nursing care, or juvenile facility;

(2) is a patient in a psychiatric facility or a psychiatric unit of an acute care hospital for more than 30-calendar days;

(3) has countable income in excess of the SSP need standard, per DHS Appendix C-1, Schedule VIII.A;

(4) has countable resources in excess of the SSP resource standard, per DHS Appendix C-1, Schedule VIII.D;

(5) does not receive SSI because the applicant or the spouse disposed of resources for less than fair market value within 36 months of the application date, per Section 1382b(c) of Title 42 of the United States Code;

(6) is not an Oklahoma resident;

(7) does not meet citizenship or alien status requirements, per Oklahoma Administrative Code (OAC) 317:35-5-25 and O.S. 71 § 56;

(8) does not take all appropriate steps to obtain other benefits with 30-calendar days after being notified of his or her potential eligibility; or

(9) is a child in DHS custody placed in out-of-home care that is paid for by DHS.

(~~b~~c) **~~Amount of~~SSP payment amount.** The SSP payment amount ~~of SSP is based upon~~ varies depending on the amount of other income the individual(s) receives. The maximum payment ~~cannot~~must not exceed the maximum payment shown on ~~OKDHS~~DHS Appendix C-1, Schedule VIII.A. for an individual. Payment ~~can~~may be authorized retroactively based on an appeal decision or to correct an administrative error. Payment ~~cannot~~may not be authorized retroactively ~~based on~~when the client ~~failure~~fails to timely report information affecting eligibility. Refer to OAC 340:65-3-6 for payment methods and issuance dates.

(1) **Eligible couple.** Income eligibility is determined by comparing the couple's total countable income ~~of the couple~~ with the SSP standard for an eligible couple. When the couple's income is:

(A) ~~If the amount of countable income is~~equal to or greater than the standard, the worker denies the application ~~is denied~~ or closes the ~~case is closed~~SSP benefit~~.~~; or

(B) ~~If the amount of countable income is~~less than the standard, the ~~total countable~~ worker deducts the couple's income ~~of the couple is deducted~~ from the standard to compute the payment amount. The SSP for each member of the couple is one-half of the remainder. ~~If~~When the SSP cannot be divided equally~~so that each member of the couple receives the same amount~~, one member of the couple receives

a higher SSP, subject to the maximum payment shown on ~~OKDHS~~DHS Appendix C-1, Schedule VIII.A.

(2) **Eligible individual.** ~~Income~~The worker determines an individual's income eligibility ~~is determined~~ by comparing ~~the~~his or her total countable income ~~of the individual~~ with the SSP standard for an eligible individual. When the individual's countable income is:

(A) ~~If the amount of countable income is~~equal to or greater than the SSP standard, the worker denies the application ~~is denied~~ or closes the ~~case is closed~~ SSP benefit~~.~~; or

(B) ~~If the amount of countable income is~~less than the SSP standard, the worker deducts the individual's total countable income ~~of the individual is deducted~~ from the standard to compute the payment amount, subject to the maximum payment shown on ~~OKDHS~~DHS Appendix C-1, Schedule VIII.A.

(3) **Eligible individual with essential spouse.** ~~Income~~The worker determines the income eligibility ~~is determined~~for an individual with an essential spouse by comparing the total countable income of the ~~individual and spouse~~couple with the SSP standard for the eligible individual with an essential or ineligible spouse. When the couple's countable income is:

(A) ~~If the amount of countable income is~~equal to or greater than the standard, the worker denies the application ~~is denied~~ or closes the ~~case is closed~~SSP benefit~~.~~; or

(B) ~~If the amount of countable income is~~less than the standard, the worker deducts the couple's total countable income ~~of the individual and spouse is deducted~~ from the standard to compute the payment amount, subject to the maximum payment,~~shown on OKDHS~~ per DHS Appendix C-1, Schedule VIII.A.

(4) **Eligible individual with ineligible spouse.** ~~Income~~The worker determines income eligibility ~~is determined~~for an individual with an ineligible spouse by comparing the total countable income of the individual with the SSP standard for the eligible individual. When the individual's countable income is:

(A) ~~If the amount of countable income is~~equal to or greater than the SSP standard for the eligible individual, the worker denies the application ~~is denied~~ or closes the ~~case is closed~~SSP benefit~~.~~; or

(B) ~~If the amount of countable income is~~less than the SSP standard for the individual, the worker compares the total countable income of the ~~individual and the spouse is compared~~couple with the SSP standard for an eligible individual with an essential or ineligible spouse. When the couple's total countable income is:

(i) ~~If the amount of countable income is~~equal to or greater than the standard, the worker denies the application ~~is denied~~ or closes the ~~case is closed~~SSP benefit~~.~~; or

(ii) ~~If the amount of countable income is~~less than the standard, the worker deducts the total countable income of the ~~individual and spouse is deducted~~couple from the SSP standard for an eligible individual with an essential or ineligible spouse to compute the payment amount, subject to the maximum payment,~~shown on OKDHS~~ per DHS Appendix C-1, Schedule VIII.A. ~~Use the standard for the eligible individual when~~ Exception: When the ineligible spouse is included in a Temporary Assistance for Needy Families (TANF) benefit, the worker deducts the individual's countable income from the SSP standard for the eligible individual and does not consider the spouse's income.

(5) **Eligible individual with ineligible spouse and dependent child.** ~~Income~~The worker determines income eligibility ~~is determined~~for an individual with an ineligible spouse and dependent child by comparing the individual's total countable income ~~of the individual~~ with the SSP standard for ~~the~~an eligible individual.

(A) ~~If~~When the individual's countable income is equal to or greater than the standard, the worker denies the application ~~is denied~~ or closes the ~~case is closed~~ SSP benefit.

(B) ~~If~~When the individual's countable income is less than the SSP standard for an eligible individual, the worker determines the spouse's countable income ~~is determined~~ by following (i) through ~~(iv)~~(v) of this paragraph.

(i) ~~If~~When the spouse and dependent child are included in a TANF benefit, their income is considered ~~on~~for the TANF ~~case~~benefit and none is deemed to the eligible individual. The worker deducts the individual's total countable income ~~of the individual is deducted~~ from the SSP standard to compute the SSP benefit amount, subject to the maximum payment, ~~shown on OKDHS~~per DHS Appendix C-1, Schedule VIII.A.

(ii) ~~If~~When the spouse's needs are not included in the TANF ~~case for~~ benefit with the child, the portion of the spouse's income ~~that is~~ considered in determining the child's TANF benefit ~~for the child~~ is not considered ~~in~~ for the SSP ~~case~~benefit.

(iii) ~~If~~When the dependent child ~~is~~does not ~~receiving~~receive TANF, the worker deducts the child's allocation, minus the child's income, ~~is deducted~~ from the spouse's income ~~to determine~~before determining the amount of the spouse's income to ~~be considered on the~~consider for the SSP ~~case~~benefit. ~~See OKDHS~~Refer to DHS Appendix C-1, Schedule VIII.C for the child's allocation amount.

(iv) The individual's total countable income and the spouse's countable income after subtracting the amount considered for the dependent child, is compared with the SSP standard for an eligible individual with an essential or ineligible spouse, per DHS Appendix C-1, Schedule VIII.A. When the countable income is:

(I) equal to or greater than the SSP standard, the worker denies the application or closes the SSP benefit; or

(II) less than the SSP standard, the worker deducts the countable income from the standard to compute the payment amount, subject to the maximum payment, per DHS Appendix C-1, Schedule VIII.A.

(~~iv~~v) ~~Income of a child~~The dependent child's income is never deemed to the adult.

~~(C) The total countable income of the individual and the spouse is compared with the SSP standard for an eligible individual with an essential or ineligible spouse.~~

~~(i) If the amount of countable income is equal to or greater than the standard, the application is denied or the case is closed.~~

~~(ii) If the amount of countable income is less than the standard, the countable income is deducted from the standard to compute the payment amount, subject to the maximum payment shown on OKDHS Appendix C-1, Schedule VIII.A.~~

(6) **Minor who is blind or disabled.** ~~Income~~The worker determines a minor's income eligibility ~~is determined~~ by adding the child's ~~own~~ income to the amount deemed from the child's parents and ~~comparing~~compares the total to the SSP standard for an eligible individual. When the countable income is:

(A) ~~If the amount of countable income is~~equal to or greater than the standard, the worker denies the application ~~is denied~~ or closes the ~~case is closed~~SSP benefit~~.~~; or

(B) ~~If the amount of countable income is~~less than the standard, the worker deducts the total countable income ~~is deducted~~ from the SSP standard to compute the payment amount, subject to the maximum payment,~~shown on OKDHS~~ per DHS Appendix C-1, Schedule VIII.A.

(~~c~~d) **Concurrent receipt of more than one ~~form of~~cash assistance payment.** ~~No person who is~~An individual must not be included in ~~a~~more than one SSP ~~may be included for the same period in another SSP~~ or ~~Temporary Assistance for Needy Families (~~TANF~~)~~ benefit for the same time period.

(1) ~~A person who is~~An individual meeting SSP eligibility requirements may receive SSP and be the payee for a TANF benefit~~, but whose~~ when his or her needs are not included~~, is not precluded from being a recipient of a SSP if he or she meets eligibility requirements~~ in the TANF cash assistance.

(2) When a TANF recipient ~~of TANF or SSP~~ is transferred ~~to another category~~from TANF to SSP or an SSP recipient is transferred from Aid to the Disabled to Aid to the Aged or Blind, the effective date must be the same for the removal from one category and the beginning of payment from the other category.

(e) **Application and renewal processing.** Refer to OAC 340:65-3-1 for application processing rules and OAC 340:65-3-8 for renewal processing rules.

340:15-1-6. Special requirements

(a) **Solicitation of alms.** Per Section 164 of Title 56 of the Oklahoma Statutes,~~provides that~~ a recipient of a State Supplemental Payment (SSP) for the blind ~~shall~~must not~~, during the period of~~ solicit alms while receiving ~~assistance, solicit alms~~SSP. Soliciting alms means collecting donations for one's personal benefit, selling minor articles when selling is merely a subterfuge for collecting donations, and any similar activities. It does not include house-to-house sale of articles carried on as a regular established occupation. The client's statement regarding solicitation of alms is sufficient verification ~~if~~when there are no facts to the contrary.

(b) **Minor child who is blind or disabled.** ~~In determining~~To determine SSP eligibility ~~of~~for a child who is blind or disabled, the income and resources of the parent(s) with whom the child is living are considered unless the parent(s) is included in a SSP or Temporary Assistance for Needy Families (TANF) application or benefit.

(1) **Deeming of income.** ~~Income of a~~A natural or adoptive ~~parent(s)~~parent(s)', or ~~step-parent and own parent~~step-parent's income must be deemed to a minor child, who is blind or disabled,~~child who is under age~~ and younger than 18 years of age, when determining the child's eligibility for ~~a~~ SSP. ~~Income of an~~An ineligible ~~child~~child's income is not deemed to the blind or disabled child. The parent(s)' income is not deemed ~~if an~~when the eligible child ~~is residing~~resides in a nursing care facility.

(2) **Deeming of resources.** ~~For each~~When a minor child, who is blind or disabled ~~and under age 18 living~~lives with his or her parent(s)~~whose needs are not included in TANF benefit, or receiving Supplemental Security Income (SSI) and/or SSP~~, the parent(s)' resources ~~which exceed the maximum amount allowable~~in excess of the resource standard, per Oklahoma Department of Human Services (DHS) Appendix C-1, Schedule VIII.D, are deemed ~~available~~ to the child ~~who is disabled~~unless the parent(s) receives Supplemental Security Income (SSI), SSP, or is included in a TANF cash assistance payment or the child resides in a nursing care facility. ~~If~~When there is more than one eligible child in the home, the parent(s)' excess resource amount is prorated between the eligible children. ~~If the minor child who is blind or disabled resides in a nursing care facility, the parent(s)' resources are not deemed to the child.~~

(3) ~~**Exceptions**~~**When the child is ineligible for SSP.** ~~A~~When a child ~~who has mental retardation lives in his or her parent(s)' home and~~with intellectual disabilities is ineligible for SSP due to ~~the~~ deeming ~~process~~his or her parent(s)' income and/or resources, the child may be approved for SoonerCare (Medicaid) benefits under the Home and Community-Based Waiver (HCBW) Services for ~~the Mentally Retarded Program as outlined in~~persons with intellectual disabilities, per Oklahoma Administrative Code (OAC) 317:35-9. When the child is not eligible for HCBW, the child may be eligible for SoonerCare (Medicaid) benefits under the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248), known as TEFRA, per OAC 317:35-5-4 and 317:35-7-36.

~~(A) The child who is determined eligible under this provision by not deeming the parent(s)' income and resources is not eligible to receive a SSP.~~

~~(B) When both parents are in the home and one parent is included in a SSP case and the spouse is included in a TANF benefit with the child, the resources of both parents are evaluated in relation to eligibility for SSI and/or SSP and are not considered on the TANF case.~~

~~(C) All resources of the parent(s) are shown on the SSP case.~~

(c) **Age.**

(1) ~~**Age**~~**SSP age requirement for the aged.** ~~To be eligible for SSP for the aged, the~~An individual must be 65 years of age ~~or~~and older ~~as~~to meet the age requirement for SSP for the aged. Eligibility is verified by the Social Security Administration~~,~~ or ~~by~~ other ~~sources of verification~~records, such as a birth certificate, insurance policies, family records, or census records.

(2) ~~**Age**~~**SSP age requirement for the blind.** There is no age requirement ~~for a~~to receive SSP for the blind. ~~The age of~~When a child, who is blind is younger than 16 years of age, his or her age must be verified in order to establish the need for designating a parent or guardian as payee~~if the child is younger than 16~~. When a recipient ~~of a~~receiving SSP for the blind reaches ~~age~~ 65 years of age, he or she is transferred to the category for the aged.

(3) ~~**Age**~~**SSP age requirement for the disabled.** To be eligible for a SSP for the disabled, an applicant or recipient must be younger than 65 years of age. A parent or guardian must be designated as payee ~~if~~when a child who is disabled is younger than 16 years of age. When a recipient ~~of a~~receiving SSP for the disabled reaches ~~age~~ 65 years of age, he or she is transferred to the category for the aged.

(d) **Fleeing felon.** A fleeing felon is not eligible for a SSP. ~~A~~Per Section 1382(e)(4) of Title 42 of the United States Code, a fleeing felon is defined as a person who:

(1) is fleeing to avoid prosecution, custody, or confinement, after conviction under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or in a jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding one year regardless of the actual sentence imposed;

(2) is violating a condition of probation or parole imposed under federal or state law; or

(3) ~~has~~lost SSI benefits due to being a fleeing felon.

(e) **Overpayments.** A client may incur an SSP overpayment ~~in any SSP Program~~ for any month in which he or she receives a SSP after SSI benefits ~~are terminated~~close and the client's income is above the SSP standard, per DHS Appendix C-1 or the client received a larger SSP than he or she was eligible to receive. The worker documents and computes the overpayment amount ~~which~~that includes any premiums for Health Insurance Benefits ~~(HIB)~~ paid by the Oklahoma Health Care Authority ~~(OHCA)~~ on behalf of an ineligible client ~~in accordance with rules at~~and sends the overpayment referral to Adult and Family Services Benefit Integrity and Recovery for establishment and collection, per OAC 340:65-9.

SUBCHAPTER 3. SUPPLEMENTAL SECURITY INCOME-DISABLED CHILDREN'S PROGRAM

340:15-3-1. Eligibility and available services

(a) **Supplemental Security Income-Disabled Children's Program (SSI-DCP).** SSI-DCP is established, per ~~Section~~Sections 504 and 1615 of the Social Security Act and administered by the Oklahoma Department of Human Services (DHS) Adult and Family Services (AFS). The Social Security Administration (SSA) refers children younger than 18 years of age, approved for Supplemental Security Income (SSI) to DHS for SSI-DCP services and, to apply for the State Supplemental Payment (SSP).

(1) Due to limited funding, requested SSI-DCP services are pre-approved by AFS Health Related and Medical Services (HR&MS) staff.

(2) AFS HR&MS staff considers many factors in deciding which services or equipment to approve including, but not limited to:

(A) the child's needs;

(B) the availability of other resources;

(C) whether the child is in a stable or temporary living situation;

(D) the cost of the service or equipment; and

(E) the availability of funding.

(b) **Eligibility.** Any child from birth to 18 years of age ~~is~~may be eligible for SSI-DCP services when the child receives a SSI payment. SSA establishes financial and medical eligibility for the SSI disability payment. When the child becomes 18 years of age, he or she is no longer eligible for SSI-DCP services. ~~A child receiving SSI is not automatically eligible for SSP.~~

(c) **Child in DHS custody.** When a child is in DHS custody and the child's SSI is retained by DHS, the child's SSI is used to pay for needed services and equipment prior to accessing SSI-DCP funds.

(~~c~~d) **Service plan.** The AFS worker completes a service plan prior to providing SSI-DCP services to the child, unless the child has a current service plan with another program within DHS or another agency.

(1) The AFS worker makes a scheduled home visit, per Oklahoma Administrative Code (OAC) 340:65-3-4(1) to complete Form 08MA017E, SSI-DCP Service Plan, with the child's parent, guardian, or caretaker. The service plan is reviewed yearly. When the child receives SSP, the AFS worker completes Form 08MA017E in conjunction with the eligibility ~~review~~renewal.

(2) When the child receives services from another agency that requires a current social service plan, such as early intervention services through SoonerStart or special education services through the local public school, the SSI-DCP service plan is not necessary.

(3) Within DHS, the child may receive services from Child Welfare Services (CWS), Developmental Disabilities Services (DDS), or Aging Services for State Plan Personal Care. When applicable, the AFS worker collaborates with CWS or DDS to:

(A) address the child's current and future social service needs; and

(B) avoid duplication in providing services.

(~~d~~e) **Services.** SSI-DCP provides funding for the services described in (1) ~~through (3)~~and (2) of this subsection. The parent, guardian, or caretaker requests services through the AFS worker in the county office and provides a prescription or written recommendation from an education or healthcare professional. The prescription or written recommendation is provided yearly at the time of the annual renewal.

(1) ~~**Diapers.** To be eligible to receive diapers, the child is at least 4 years of age. Once the child turns 18 years of age, he or she is not eligible for diapers. Prior to approval, a health care professional documents in writing that the child cannot be toilet trained. When approved by AFS HR&MS staff, authorized county staff orders available diapers through the DHS Supply Warehouse. Only diapers available through the DHS Supply Warehouse are approved.~~

~~(2)~~ **Formula.** A health care professional provides a prescription naming the brand of formula needed by the child. When approved by AFS HR&MS, authorized county staff orders available formula through the DHS Supply Warehouse. Only formula available through the DHS Supply Warehouse is approved.

(~~3~~2) **Interaction and integration services.** Non-medical services aimed at strengthening the child physically or mentally; providing opportunities for social interaction; or assisting with mobility may be approved when recommended by an education or health care professional and the recommendation clearly defines the goals and objectives for the child. Examples of such services include, but are not limited to, swimming or horseback riding lessons, sports activities, or a health club membership. Due to budget constraints, services are approved on a temporary basis.

(~~e~~f) **Equipment.** Equipment approved through SSI-DCP is used to aid the child in accessibility or mobility. Equipment available through SSI-DCP is pre-approved by AFS HR&MS Section staff. Available equipment that may be approved is described in (1) and (2) of this subsection. The parent, guardian, or caretaker provides a written recommendation from an education or health care professional with knowledge concerning the child's equipment needs. HR&MS ~~Section~~ staff does not approve requests for equipment the child can obtain through other sources, such as SoonerCare (Medicaid) or through the child's school.

(1) **Developmental aid.** A developmental aid is any device or equipment adapted to meet the needs of a child with disabilities. An education or healthcare professional provides a written explanation concerning the goals and objectives this developmental aid meets before it is approved. Educational or classroom devices, equipment, or supplies not adapted for the child's needs are not in the scope of the program.

(2) **Van lifts.** Van lifts are devices used for vehicular transportation of wheelchairs. Van lifts may be approved when needed to transport a child in a wheelchair. A van lift is not approved for a child in DHS or tribal custody or in the Developmental Disabilities Home and Community-Based Waiver Program. Modifications to the van are not approved.

(A) The parent, guardian, or caretaker must own the van as verified by title registration and license verification and the van must be in operating condition.

(B) The family provides estimates from two van lift dealers who employ certified van lift installation technicians.

(C) When the request is approved, HR&MS staff contacts the family and approved vendor to arrange installation of the van lift.

(D) Only a certified van lift specialist is approved to install the lift and the lift must have factory and dealership ~~warranty~~warranties equal to the private purchase warranty.

(E) HR&MS staff does not approve replacement of a van lift within 10 years of the purchase date.

(F) SSI-DCP staff does not pay for repairs of vans or van lifts not purchased with SSI-DCP funds.

(~~f~~g) **Exclusions.** Items or supplies not in the scope of SSI-DCP are not approved. Examples of excluded items or supplies include, but are not limited to:

(1) learning programs;
(2) psychological programs;
(3) books;
(4) video or audio tapes;
(5) paper, pencils, or art supplies;
(6) computers, tablet computers, or computer software;
(7) televisions; and
(8) video games.

(~~g~~h) **Purchasing procedures.** SSI-DCP orders are processed through AFS HR&MS. Purchased equipment is shipped to the local county office.

(~~h~~i) **SSI-DCP notices.** When a SSI-DCP request is denied, ~~the~~ AFS ~~worker~~HR&MS staff sends ~~a hand-generated denial notice using~~ Form ~~08MA004E~~08MP038E, ~~Notification of Eligibility Status for Medical Assistance~~Client Notice of Action Taken, to inform the child's parent, guardian, or caretaker the item is not approved for purchase through SSI-DCP funding. The family may request a fair hearing by completing Form 13MP001E, Request for a Fair Hearing, within 30-calendar days from the issuance date of ~~the notice by completing Form 13MP001E, Request for a Fair Hearing~~Form 08MP038E.

(~~i~~j) **Respite Voucher Program.** The Respite Voucher Program provides financial assistance in the form of vouchers to families to pay for respite care. When the family appears eligible for the Respite Voucher Program, the worker gives the client Form 08RV001E, Respite Voucher Application for Children With Special Health Care Needs, to complete. When funding is not available through HR&MS, the worker advises the family to call a designated number to request a

respite voucher application from Sooner SUCCESS for the Lifespan Respite Grant Voucher Program. ~~The~~SSI-SSI-DCP, other DHS programs, and certain public and private agencies provide funding to the Respite Voucher Program.

(1) The caregiver is the person who provides ongoing care for the child. He or she may be a parent, grandparent, other relative, or non-relative.

(2) When respite care is approved ~~it~~the respite provider must be at least 18 years of age. Respite care is not:

(A) designed to pay for ongoing care, such as child care, therapy, in-home assistance, housekeeping, or home health services; and

(B) provided by a member of the child's household.

[OAR Docket #19-627; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

[OAR Docket #19-628]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Low Income Home Energy Assistance Program
340:20-1-12 [AMENDED]
340:20-1-17 [AMENDED]
(Reference WF 19-20)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162); and Section 8623 of Title 42 of the United States Code.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed amendments to Chapter 20, Subchapter 1 amend the rules to: (1) clarify that a household must have a verified, active cut-off order to be eligible to receive Energy Crisis Assistance Program (ECAP) assistance; (2) add that an application is not required for households experiencing an energy crisis involving a life-threatening medical situation; and (3) move eligibility decision making for ECAP applications involving a life-threatening medical situation to centralized LIHEAP staff.

CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

340:20-1-12. Applications

Households apply for the Low Income Home Energy Assistance Program (LIHEAP) by submitting an online application ~~via~~at www.okdhslive.org~~, or calling~~ phoning 405-487-5483 to apply~~, by phone~~ or ~~to request~~ requesting Form 08LH002E, Application for Low Income Home Energy Assistance Program (LIHEAP) Application, be mailed, to be completed and returned. When Form 08LH002E is mailed to the household with a postage paid envelope, the application must be completed and returned ~~to the~~by email~~, or fax~~ faxed to the number on the form, or mailed to the return address ~~on~~in the postage paid envelope.

(1) Households pre-authorized for the LIHEAP winter heating or summer cooling programs are approved without filing an application. Households pre-authorized for LIHEAP are households ~~who~~that received State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), or Supplemental Nutrition Assistance Program (SNAP) benefits all 12 months of the previous year and met criteria in (A) through (D) of this paragraph. The household:

(A) received LIHEAP the previous year;

(B) address remains the same;

(C) income did not change or exceed eligibility guidelines for household size during the year; and

(D) members remain the same from the previous year.

(2) A computer-generated notice is mailed in November of each year for winter heating and in June for summer cooling to households not selected for preauthorization that receive SNAP benefits, TANF, and SSP at the time of the mailing. The notice informs the household it may apply online at www.okdhslive.org~~, or by calling~~ phone 405-487-5483 to apply~~, by phone~~ or request Form 08LH002E, Low Income Home Energy Assistance Program (LIHEAP) Application, be mailed, to be completed and returned.

(3) When an application is denied, the household may request a fair hearing when it does not agree with the decision or submit a new application to reapply.

(4) When a household moves after applying for LIHEAP, a new application is not necessary. However, the household must report the change of "service" address ~~within 10 calendar days~~ to the county office or by phoning

~~okdhslive at~~ 405-487-5483, within 10-calendar days of moving.

(5) To ensure payments are made to the correct energy supplier, the household must provide the correct account name, account number, and energy supplier when submitting an application. All households applying for the Energy Crisis Assistance Program must ~~also provide the most recent~~have a verified, active cut-off ~~notice~~order, notice of refusal to provide additional fuel, or verification of the fee to establish or re-establish service from an energy supplier.

340:20-1-17. Energy Crisis Assistance Program (ECAP)

(a) **ECAP funds.** Based upon previous years' program experience, reasonable funds are reserved each year for ECAP to resolve energy crisis situations to prevent disconnect of service when the household has a ~~72 hour~~verified, active cut-off ~~notice~~order scheduled within 72 hours, restore or start service, or provide a minimum delivery of propane or other heating fuel,per Section 8623(c) of Title 42 of the United States Code (42 U.S.C. § 8623(c)). ECAP consists of two components:

(1) scheduled intermittent application periods each year; and

(2) year round assistance available on a case-by-case basis for households experiencing an energy crisis ~~and a~~that involves a life-threatening medical situation.

(b) **Maximum benefit amount.** When the household applies for ECAP more than once in the same fiscal year, the maximum benefit amount approved for all applications combined cannot exceed the amount shown per fiscal year for ECAP on Oklahoma Department of Human Services (DHS) Appendix C-7-A, Estimated Low Income Home Energy Assistance Program (LIHEAP) Benefit Level For All Households.

(c) **ECAP application methods.** Households apply for ECAP by submitting an online application at www.okdhslive.org ~~or by calling~~ phoning 405-487-5483~~,~~ to apply,~~by phone~~ or ~~request~~ requesting Form 08LH002E, Low Income Home Energy Assistance Program (LIHEAP) Application,be mailed, to be completed and returned.

(1) When there is a life-threatening medical situation, LIHEAP staff gathers eligibility information by phone and an application is not required.

(2) When Form 08LH002E is mailed to the household with a postage paid envelope, the application must be completed and returned ~~to the~~ by email, ~~or fax~~ faxed to the number on the form, or mailed to the return address ~~on~~ in the postage paid envelope.

(3) ~~Applications~~ECAP applications are approved or denied by~~:~~

~~(1)~~ centralized ~~Adult and Family Services (AFS)~~ LIHEAP staff~~when applications are made during an intermittent ECAP application period for energy crises that do not involve a life-threatening medical situation; and~~

~~(2) AFS LIHEAP program field representative staff for energy crises involving a life-threatening medical situation the year~~.

(d) **Primary energy source.** Households may choose heating or cooling as the primary energy source for ECAP when the household's main energy source meets criteria per (e)(2) of this Section. When a life-threatening medical situation is involved, the household must choose the energy source that resolves the energy crisis and ~~the~~prevents a life-threatening medical situation. When the household chooses:

(1) heating, the heating energy source may be electric, natural gas, propane, kerosene, wood, coal, or heating oil; or

(2) cooling, the household must choose electricity as the primary cooling energy source.

(e) **Eligibility criteria.** ECAP eligibility criteria are detailed in (1) through (5) of this subsection.

(1) Households with an energy crisis must not exceed the income and liquid resource standards, per ~~Oklahoma Department of Human Services (~~DHS~~)~~ Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size. Households must meet the same income and resource criteria for ECAP as for heating and cooling assistance, per Oklahoma Administrative Code ~~(OAC)~~ 340:20-1-11.

(2) Households must have a verified energy crisis. An energy crisis exists when:

(A) service ~~was~~is disconnected by the energy supplier;

(B) the household ~~received~~has a ~~notice of a~~verified, active cut-off order scheduled ~~cut-off~~ within 72 hours;

(C) the household received a notice of refusal to provide additional energy needs by the supplier and the household's fuel supply is or will be depleted within 72 hours or less; or

(D) the household provides information regarding a fee for a new connection.

(3) The household must have experienced a precipitating factor that caused the household to choose between paying the energy bill and another vital household need.

(A) Acceptable factors include, but are not limited to, temporary or short-term situations that caused the household to make a choice between paying the energy bill and:

(i) purchasing sufficient food for the household;

(ii) paying for emergency situations, such as medical expenses or disaster recovery; or

(iii) providing clothing for children in the household.

(B) When the household was approved for the maximum ECAP payment during the most recent fiscal year, no further ECAP payments are made during the same fiscal year.

(C) Households approved for less than the maximum ECAP payment~~,~~may be approved for another ECAP payment during the same fiscal year,provided the total approved for all payments does not exceed the maximum ECAP payment, per DHS Appendix C-7-A. Per 42 U.S.C. § 8624(b)(16), an additional

ECAP payment is not approved for the same fiscal year when the household:

(i) refuses to participate in budget counseling and home energy conservation workshops provided by Community Action agencies;

(ii) ~~has~~did not ~~shown~~show any progress in improving its situation; or

(iii) ~~has~~did not ~~made~~make an effort to maintain current utility bills.

(4) The household must explain why the energy crisis need cannot be met by available income and liquid resources, even when income and liquid resources are equal to or below the standard, per DHS Appendix C-7.

(5) When the ECAP benefit amount is insufficient to establish, restore, or prevent the cut-off of the household's energy source, ECAP is authorized only when the ECAP payment, combined with other resources that are available or can be developed, to meet the energy crisis. When a feasible plan cannot be developed, the ECAP application is denied.

(f) **ECAP payment requirements.** ECAP payment requirements are included in (1) through (4) of this subsection.

(1) The authorized ECAP benefit is limited to the amount necessary to connect, restore, or maintain energy service to the household, up to the established maximum for the program year, per DHS Appendix C-7-A.

(2) DHS makes payments for crisis assistance directly to energy suppliers unless the energy supplier is not designated to receive direct payments from DHS.

(3) The authorized benefit cannot include the cost of propane or butane tank delivery.

(4) When other utilities are included with the heating or cooling bill, such as water, sewer, or trash, the authorized benefit cannot include the other utility charges. In this situation, the applicant must provide a utility bill that itemizes the charges for each utility or this information must be obtained from the energy supplier. When the client is unable to pay the other utility costs and the provider is unwilling to continue heating or cooling service, the application is denied until the applicant provides verification that the other utilities were or can be paid.

(g) **Timeliness requirement.** Per 42 U.S.C. § 8623(c), an ECAP application is considered timely processed when it is approved or denied within:

(1) 18 hours of ~~receipt of a complete application~~ the household requesting ECAP when the energy crisis involves a life-threatening medical situation. ~~A complete application means the application is signed and submitted and all verification is provided.~~

(A) To be considered a life-threatening ~~emergency~~medical situation, the energy crisis must involve the energy source required:

(i) for life-saving medical equipment to be operational. The medical equipment must be prescribed by a licensed health care professional and require electricity to operate. When the medical equipment has an available battery backup in case of an electricity outage, the medical situation is not considered life-threatening. The client must provide medical records or a licensed health care professional statement dated within the last six months verifying that the medical equipment is prescribed and a battery backup is not available. Examples of life-saving medical equipment include, but are not limited to:

(I) a kidney dialysis machine;

(II) an iron lung;

(III) an oxygen concentrator or other type of oxygen machine; or

(IV) a cardiac monitor; or

(ii) to power heating or air conditioning equipment when the temperature is predicted to be hot or cold enough to create a life-threatening ~~when~~medical situation if the energy source is not functioning. To be considered a life threatening medical situation, the temperature on the disconnection date must be predicted to be:

(I) a heat index of at least 101 degrees in summer months; or

(II) 32 degrees or lower during day time hours and/or 20 degrees or lower during night time hours in winter months.

(B) Authority for designating a ~~crisis~~medical situation as life-threatening is limited to a:

(i) licensed health care professional; or

(ii) public health official; and

(2) 48 hours of receipt of a complete application when the energy crisis does not involve a life-threatening medical situation. A complete application means the application is signed and submitted and all verification is provided.

[OAR Docket #19-628; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 25. CHILD SUPPORT SERVICES

[OAR Docket #19-629]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Scope and Applicability
340:25-1-1.1 [AMENDED]
340:25-1-2 [AMENDED]
Subchapter 5. Operational Policies
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-110.1 [AMENDED]
340:25-5-124 [AMENDED]
Part 17. Past Support
340:25-5-140 through 340:25-5-140.1 [AMENDED]
Part 20. Medical Support
340:25-5-168 [AMENDED]
Part 21. Establishment
340:25-5-176 through 340:25-5-176.1 [AMENDED]
340:25-5-178 [AMENDED]
340:25-5-179.1 [AMENDED]
Part 22. Review and Modification
340:25-5-198 [AMENDED]

Part 23. Enforcement
340:25-5-200 [AMENDED]
340:25-5-212 [AMENDED]
340:25-5-214 [AMENDED]
Part 31. Consumer Reporting Agencies - Credit Bureaus
340:25-5-265 [AMENDED]
Part 37. Recovery
340:25-5-305 [AMENDED]
340:25-5-312 [REVOKED]
Part 39. Accounting and Distribution
340:25-5-350.1 [REVOKED]
340:25-5-350.3 [AMENDED]
340:25-5-351 [AMENDED]
(Reference WF 19-25)

AUTHORITY:
Department of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Public Law 115-123; Sections 1681b & 1681f of Title 15 of the United States Code (15 U.S.C. §§ 1681b & 1681f); 28 U.S.C. § 1738B; 42 U.S.C., Chapter 7, Subchapter IV, Part D; 50 U.S.C. §§ 3901 through 4043; Chapter III of Subtitle B of Title 45 of the Code of Federal Regulations; 10 O.S. §§ 80, 83, 90.4, 90.5, and 7700-101 through 7800; 12 O.S. §§ 1031, 1031.1, 1038, 1170, 1171.2 through 1171.4, and 2004; 21 O.S. §§ 566 through 567 and 852; 36 O.S. § 6058A; 43 §§ 109.2 through 110, 112 through 112.1A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-903; 56 O.S. §§ 166.1, 171, 183, 185, 230.60, and 231 through 244; 63 O.S. §§ 1-311 through 1-311.3 and 1-321; and 68 O.S. § 205.2.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019

COMMENT PERIOD:
January 15, 2019 through February 14, 2019

PUBLIC HEARING:
February 26, 2019

ADOPTION:
February 27, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 16, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The proposed amendments to Subchapters 1 and 5 of Chapter 25: (1) align provisions in Senate Bill 979 (SB 979) from the 2nd Session of the 56th Legislature that amended 43 O.S. § 118F to comply with Section 303.31(b)(2) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.31(b)(2)) that mandates Child Support Services (CSS) include government medical assistance, such as SoonerCare (Medicaid), as qualifying health care coverage; (2) implement policy changes recommended during the annual CSS policy review process; (3) amend legal authority as necessary; (4) make changes to meet compliance with federal law changes effective October 1, 2018; and (5) make non-substantive cleanup to improve rule clarity.

CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1.1. Definitions

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

"Address of record" or **"AOR"** means an address for a party or a custodial person (CP) in the Central Case Registry of Child Support Services (CSS) used for service of process in support, custody, and visitation actions. An AOR may be different from the party's or CP's physical address.

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined* per Section 7700-102 of Title 10 of the Oklahoma Statutes (10 O.S. § 7700-102).

"Alternative health coverage" means health care services other than health insurance including, but not limited to, Indian Health Services (IHS) or Defense Eligibility Enrollment Reporting System (DEERS) available to either parent under which medical services could be provided to the dependent child(ren).

"Annual notice" means the yearly notice provided for in 56 O.S. § 237A to notify the noncustodial parent (NCP) and CP of the amount due, actions that may be taken to enforce the child support obligation, actions required of the NCP and CP, and other related information and instructions.

"Applicant" means the individual who requested child support services or was referred by another agency or program for child support services.

"Arrears,""arrearage," or **"past-due support"** means the total amount of unpaid support obligations accrued under a support order. Refer to "delinquency" in this Section.

"Assignment" means any transfer of rights to support to the State of Oklahoma under Sections 608 and 671 of Title 42 of the United States Code (42 U.S.C. §§ 608 and 671) or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations (42 C.F.R. § 433.146).

"Authorized representative" means a person designated by a CP, NCP, or biological parent per Oklahoma Administrative Code (OAC) 340:25-1-3.1.

"Biological parent" means the natural parent of a child.

"Case" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who is receiving or received child support services and all of the records and actions associated with the group.

"Cash medical support" means *an amount ordered to be paid toward the cost of health coverage provided by a public entity or by a person other than the parents through employment or otherwise* per 43 O.S. § 118F.

"Central Case Registry" or **"CCR"** means Oklahoma's repository for Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D) cases and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the Federal Case Registry per 42 U.S.C. § 654a. CSS maintains the CCR per 43 O.S. § 112A.

"Centralized Support Registry" means a repository maintained by CSS to receive, allocate, and distribute support

payments, including child support, spousal support when paid in conjunction with child support, and related support payments per 43 O.S. § 413. It serves as Oklahoma's State Disbursement Unit per 42 U.S.C. § 654b. The Centralized Support Registry processes payments per 43 O.S. § 413:

(A) *in all cases in which child support services are being provided under the state child support plan* as provided under Section 237 of Title 56 of the Oklahoma Statutes until all monies owed for child support are no longer owed;

(B) *in all other cases in which support is being paid by income withholding*; and

(C) when a court orders payments to be made through the Centralized Support Registry.

"Child support order" means an obligation addressing monetary support, cash medical support, medical support for the child(ren), and support arrearage and arrearage payments, when any.

"CSED" means Oklahoma Department of Human Services Child Support Services and was replaced by Child Support Services.

"CSS" means Child Support Services. CSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, community action program agencies, and others. CSS includes all of these offices, employees, and agents. CSS was formerly known as CSED and Oklahoma Child Support Services (OCSS).

"Current child support" means the base child support obligation and the proportional share of health insurance costs, fixed medical costs, transportation expenses, and annualized child care costs. Current child support does not include cash medical support.

"Custodial person,""custodian," or **"CP"** means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid* per 12 O.S. § 1170 and 56 O.S. § 237.7.

"DHS" means the Oklahoma Department of Human Services, formerly known as OKDHS. DHS is the state agency designated to administer the child support program for the State of Oklahoma.

"District office" means a child support services office operated by DHS or through contract or agreement with DHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"Fixed medical" means fixed periodic payments for ongoing medical costs not paid or reimbursed by insurance or included in a cash medical support order.

"Full-service case" means a child support case for which CSS provides all appropriate Title IV-D services per OAC 340:25-1-1.2.

"Health insurance" means insurance coverage that provides routine and major medical expenses including, but not limited to: preventive care, office visits, hospitalization, and medication coverage that may be provided through a fee for service, health maintenance organization, preferred provider organization, or other private or public organization, other than SoonerCare (Medicaid).

"High-volume administrative enforcement cases in interstate actions" means on request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes per 42 U.S.C. § 666.

"Income assignment" means an assignment, by operation of law or by court or administrative order of a portion of the monies, income, or periodic earnings due and owing by the NCP to the person entitled to the support or to another person designated by the support order or assignment, per 12 O.S. § 1170 and 56 O.S. § 237.7. An income assignment may be for payment of current support, arrearages, or both. The terms "income assignment" and "income withholding" may be used interchangeably.

"Interstate case" means a case in which at least one party resides in another state or country or a support order was entered in another state or country.

"Intrastate case" means a case existing or occurring within the boundaries of a single state.

"IV-A" means Title IV, Part A, of the Social Security Act, codified in 42 U.S.C. Part A of Subchapter IV of Chapter 7, covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act, codified in 42 U.S.C. Part B of Subchapter IV of Chapter 7, covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act, codified in 42 U.S.C. Part D of Subchapter IV of Chapter 7, generally relating to child support.

"IV-D case" means a child support case receiving Title IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act, codified in 42 U.S.C. Part D of Subchapter IV of Chapter 7.

"IV-E" means Title IV, Part E, of the Social Security Act, codified in 42 U.S.C. Part E of Subchapter IV of Chapter 7, covering foster care.

"IV-E foster care" means federal and state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for Title IV-E foster care.

"Medicaid" means medical assistance provided under a state plan approved under Title XIX of the Social Security Act, codified in 42 U.S.C. Subchapter XIX of Chapter 7 including SoonerCare, State Children's Health Insurance Program (S-CHIP), and Insure Oklahoma. In Oklahoma, the Oklahoma Health Care Authority (OHCA) provides Medicaid services for eligible adults and children.

"Medical enforcement only case" or **"MEO case"** means a child support case for which CSS provides only Title IV-D services related to securing and enforcing medical support to non-TANF SoonerCare (Medicaid) recipients.

"Medical support" means health insurance, alternative health coverage, cash medical support, or a combination of these for the benefit of a minor child(ren).

"Member of military service" or **"servicemember"** means any member of the uniformed service on active duty including the Army, Navy, Air Force, Marine Corps, and Coast Guard. Also included are members of the National Guard called to active service, certain members of the Public Health Service, National Oceanic and Atmospheric Administration, Reserves when ordered to report for active military duty, and United States citizens serving with the military of other countries when that service is similar to military service per 50 ~~App.~~ U.S.C. §§~~511~~ 3911, ~~514~~3914, and ~~516~~3917. A servicemember may be an NCP or a CP.

"Non-cash support" means support given to a family in the nature of goods or services that can be assigned a specific dollar value in lieu of monetary payment.

"Noncustodial parent" or **"NCP"** means a parent who does not have primary physical custody of the child(ren).

"Non-IV-D case" means a private child support case not receiving Title IV-D services.

"Non-IV-E foster care" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal Title IV-E participation requirements.

"Non-TANF SoonerCare (Medicaid)" means a case in which a parent or CP receives Title XIX Medicaid services for the minor child(ren).

"Notice of Income Assignment" means the tool used to affect the income withholding process. This document is used to notify employers and other withholders to deduct child support payments from an NCP's income and to send the payments to Oklahoma's Centralized Support Registry for distribution. The terms "income withholding" and "income assignment" may be used interchangeably.

"OAH" means the DHS Legal Office of Administrative Hearings: Child Support (OAH) that employs and assigns administrative law judges to conduct child support administrative hearings.

"Obligee" or **"person entitled"** per 56 O.S. § 237.7 means:

(A) *a person to whom a support debt or support obligation is owed*;

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services*; or

(C) *a person designated in a support order or as otherwise specified by the court.*

"Obligor" means the person who is required to make payments under an order for support per 12 O.S. § 1170 and 56 O.S. § 237.7.

"OCSS" means CSS.

"Offset" means an amount of money intercepted from an NCP's state or federal tax refund or from an administrative payment, such as federal retirement benefits to satisfy a child support debt.

"OKDHS" means DHS.

"Oklahoma Health Care Authority (OHCA)" means the Oklahoma agency that administers the Medicaid and SoonerCare programs for adults and children who meet eligibility requirements. OHCA operates under the authority of Title XIX of the Social Security Act and 63 O.S. §§ 5003 et seq.

"Overpayment" means a CSS payment to a CP, NCP, or other entity to which the entity or person is not entitled.

"Participant in a case" means a child, parent, alleged father, or CP associated with a child support services case.

"Past support" means past-due support or support for a prior period. Refer to "arrears" in this Section.

"Payment plan" includes, but is not limited to, a plan approved by the court or the support enforcement entity that provides sufficient security to ensure compliance with a support order, incorporates voluntary or involuntary income assignment, or a similar plan for periodic payment of past-due support and, when applicable, current and future support per 43 O.S. § 139.1 and 56 O.S. § 237.7. A payment plan is intended to incrementally reduce arrears.

"Payor" means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person* per 12 O.S. § 1170 and 56 O.S. § 237.7.

"Presumed father" means *a man who, by operation of law* per 10 O.S. § 7700-204*, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding*.

"Record" means a written document or image stored in electronic or physical form.

"Social Security Act" means Public Law 74-271, codified in 42 U.S.C. Chapter 7 that established the Title IV-D program and other social services programs.

"State's attorney" means a lawyer employed in the child support program to represent the state in rendering services per the Social Security Act, codified in 42 U.S.C. Part D of Subchapter IV of Chapter 7.

"Support" per 56 O.S. § 237.7 means all payments or other obligations due and owing to the CP or person entitled by the NCP under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations specified in 43 O.S. §§ 118A through 119.

"Support for a prior period" means the amount of child support ordered under the child support guidelines in 43 O.S. §§ 118 through 119 in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" per 43 O.S. § 601-101 means a *judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.*

"TANF" means Temporary Assistance for Needy Families. TANF replaces Aid to Families with Dependent Children (AFDC).

"Tribunal" per 43 O.S. § 601-101, means a court or administrative agency authorized to establish, enforce, modify support orders, or determine parentage.

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at 43 O.S. §§ 601-100 through 601-903.

"Unreimbursed public assistance" means money paid as cash assistance from Title IV-A and Title IV-E programs that has not been recovered.

"UPA" means the Uniform Parentage Act. In Oklahoma, UPA is codified in 10 O.S. §§ 7700-101 through 7700-902.

340:25-1-2. Legal base

(a) **Federal law.** Sections 651 through 669b of Title 42 of the United States Code (42 U.S.C. §§ 651 through 669b) are the primary basis in federal law for Oklahoma's child support program. The program is also governed by Chapter III of Title 45 of the Code of Federal Regulations. The Servicemembers Civil Relief Act, codified in 50 ~~App.~~U.S.C. §§~~5013~~3901 through ~~5964~~4043, applies to servicemembers. Other federal laws and regulations are followed to the extent they apply to Oklahoma's child support program.

(b) **State law.** Oklahoma Statutes covering child support issues include, but are not limited to:

(1) Sections 80, 83, 90.4, 90.5, and 7700-101 through 7800 of Title 10 (10 O.S. §§ 80, 83, 90.4, 90.5, and 7700-101 through 7800);

(2) 12 O.S. §§ 1170 and 1171.2 through 1171.4;

(3) 21 O.S. §§ 566, 567, and 852;

(4) 43 O.S. §§ 109.2 through 110, 112, 112A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-903;

(5) 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24;

(6) 63 O.S. §§ 1-311.2 and 1-311.3; and

(7) 68 O.S. § 205.2.

(c) **Applicability.** Oklahoma Department of Human Services Child Support Services (CSS) uses federal or state statutes, as appropriate, in specific situations to establish and enforce child support orders. CSS follows applicable federal and state ~~and federal~~ laws in carrying out its responsibilities and providing services regardless of whether a statute, regulation, final order, or other legal obligation is specifically referenced in this Chapter.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-110.1. Applications

(a) Oklahoma Department of Human Services (DHS) Child Support Services (CSS) initiates child support cases, per Title IV, Part D, of Subchapter IV of Chapter 7 of Title 42 of the United States Code, Sections 302.33 and 303.2 of Title 45 of the Code of Federal Regulations, and Section 237 of Title 56 of the Oklahoma Statutes (56 O.S. § 237).

(~~a~~b) To apply for child support services, a person must submit a completed and signed application form to the address on the form. A one cent application fee is paid by ~~Oklahoma Child Support Services (OCSS)~~CSS for each application received. An application for child support services is submitted in every circumstance, including applications received by:

(1) former Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children (AFDC), or non-TANF SoonerCare (Medicaid) recipients with ~~the Oklahoma Department of Human Services (OKDHS)~~DHS;

(2) former participants in Title IV-D cases;

(3) noncustodial parents (NCP) listed on an existing medical enforcement only case, ~~if~~when the ~~noncustodial parent~~NCP is requesting a review and adjustment or to open a new case, per Oklahoma Administrative Code (OAC) 340:25-5-198.1; or

(4) persons receiving child support payments from the Centralized Support Registry and not currently receiving child support services through ~~OCSS~~CSS.

(~~b~~c) Application forms are obtained at any child support or other ~~OKDHS~~DHS office or by writing or ~~telephoning OCSS~~phoning CSS at the address and ~~telephone~~phone numbers provided in OAC 340:25-1-2.1. Printable application forms are available from the ~~OCSS~~CSS website at ~~http://www.okdhs.org/childsupport/~~ http://www.okdhs.org.

(~~c~~d) An applicant who is a custodial person (CP) must give ~~OKDHS~~DHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the ~~custodial person~~CP and child(ren).

(~~d~~e) ~~OCSS~~CSS accepts an application from a CP, parent, or person alleging his or her parentage and opens a case when:

(1) the child is a minor or is still entitled to current support per ~~Section 112 of Title 43 of the Oklahoma Statutes (~~43 O.S. § 112~~)~~;

(2) the application is to enforce a child support order for an adult with disabilities per 43 O.S. § 112.1A;

(3) ~~paternity~~parentage must be established for a minor child against a deceased ~~noncustodial parent consistent~~NCP per OAC 340:25-5-176; or

(4) the former ~~custodial person's~~CP's parental rights ~~have been~~were terminated, then the child was adopted, and the application to collect past-due support owed to the former ~~custodial person~~CP was received before the adoption.

(~~e~~f) ~~OCSS~~CSS does not accept applications for collection of past-due support when:

(1) all children on the application have reached the age of majority and none is an adult with disabilities with an established child support order;

(2) the child is deceased; or

(3) the child is a minor but no longer resides with the ~~custodial person~~CP.

(~~f~~g) ~~OCSS~~CSS accepts applications for locate only services ~~pursuant to~~per OAC 340:25-5-155.

340:25-5-124. Assignment and transfer of cases to child support offices

In assigning cases to child support offices, Oklahoma Department of Human Services Child Support Services ~~(OCSS)~~(CSS) considers whether the case is eligible for assignment to one of the tribal programs,~~under OAC 340:25-5-124.2~~ per Oklahoma Administrative Code (OAC) 340:25-5-286. ~~OCSS~~CSS treats an order registered in Oklahoma,~~under~~ per Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 601-601 through 601-614) as an Oklahoma order for purposes of OAC 340:25-5-124(1) and (2). If the case is not assigned to one of the tribal programs, ~~OCSS~~CSS assigns cases under this Section.

(1) Oklahoma child support cases are assigned to a district office serving the county where a prior Family and Domestic district court case exists involving the parents and child(ren), regardless of the case style of the order or whether or not a child support order was entered as to either parent. ~~If there is~~When a guardianship order is in effect, the case is assigned to the district office serving the county in which the guardianship action was filed. The district office proceeds to petition the guardianship court to:

(A) defer jurisdiction of child support to ~~OCSS~~CSS. The case then follows regular case assignment rules;

(B) defer jurisdiction of child support to a pre-existing Family and Domestic court case involving the parents and child(ren) to enforce an existing child support order or establish a child support order. The case is assigned to the district office serving the county with the existing Family and Domestic court order; or

(C) establish a child support order. The case is assigned to the district office serving the county of the guardianship.

(2) Child support orders from another state, or federal or tribal child support orders, are assigned to a district office serving the county in which the order is registered ~~under Sections~~per 43 O.S. §§ 601-601 through 601-614~~of Title 43 of the Oklahoma Statutes~~. ~~If~~When there are multiple Oklahoma support orders, cases are assigned to a district office serving the county where the presumed controlling order for current child support was entered or docketed in district court.

(3) Cases are assigned to a district office serving the county where the ~~custodian of the child(ren)~~custodial person (CP) resides when there is:

(A) no Oklahoma child support order and there is no prior Family and Domestic district court case on file;

(B) a federal or tribal child support order; or

(C) a child support order from another state.

(4) When the applicant for child support services is the noncustodial parent (NCP), the location of the ~~custodial person~~CP and child is unknown, and there is no prior paternity or child support order established, cases are assigned to the office responsible for the county in which the ~~noncustodial parent~~NCP resides until the ~~custodial person~~CP and child are located.

(5) Except in cases where a child support order is registered in Oklahoma, ~~if~~when the ~~custodian of the child(ren)~~CP does not reside in Oklahoma, cases are assigned to the district office serving the county where the ~~noncustodial parent~~NCP or alleged father resides.

(6) When there is no Oklahoma order and no party resides in Oklahoma, cases are assigned to the district office serving the county with significant contacts with the case. When more than one county has significant contacts with the case, the case is assigned to the district office having the most recent significant contact.

(7) ~~OCSS~~CSS does not transfer cases docketed or registered,~~under Sections~~ per 43 O.S. §§ 601-601 through 601-614 ~~of Title 43 of the Oklahoma Statutes~~ in district court because the ~~custodial person~~CP or ~~noncustodial parent~~NCP moves to a county outside of the original district office's service area.

(8) ~~OCSS~~CSS does not transfer cases because the ~~custodial person~~CP files a contempt action in a county outside of the original district office's service area.

(9) ~~OCSS~~CSS reassigns a case to another district office to avoid a conflict of interest,~~under~~ per OAC 340:2-1-8.

PART 17. PAST SUPPORT

340:25-5-140. Past support

(a) **~~Authority~~Legal authority.** Oklahoma Department of Human Services, Child Support Services ~~(OCSS)~~(CSS) takes appropriate action to collect support and secure compliance with support orders.

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the entry of the child support order and on the first day of each month thereafter except when another state's law governs the due date.

(2) ~~OCSS~~CSS bases its determination of past-due support and support for a prior period on information in available records from courts, Title IV-D and other public and private agencies, custodial persons (CPs), noncustodial parents (NCPs), and others.

(3) ~~OCSS~~CSS may require sworn written statements and supporting documents from CPs, NCPs, and others pertaining to support payments. The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of:

(A) Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code;

(B) Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B);

(C) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and

(D) Sections 83 and 7700-636 of Title 10 (10 O.S. §§ 83 and 7700-636), Chapters 3 and 21 of Title 12, Title 43, and ~~Sections 231 through 240.23 of Title~~

~~56 of the Oklahoma Statutes~~56 O.S. §§ 231 through 240.23.

(b) **Judgment payment.** Per ~~Section 137 of Title 43 of the Oklahoma Statutes (~~43 O.S. § 137~~)~~, the monthly payment schedule on past support may not exceed three years unless specific findings of fact supporting the action are made. ~~OCSS~~CSS considers a three-year payment schedule to be unjust, unreasonable, inequitable, or inappropriate when ~~OCSS~~CSS has evidence that the NCP cannot comply with the payment plan. ~~OCSS~~CSS requests a monthly payment schedule that may exceed three years in accordance with the best evidence available, including the NCP's earning records, past job history, earning ability based on education and training, and mental or physical incapacities. ~~OCSS~~CSS also considers ~~a~~an NCP's other child support obligations and total arrears.

(c) **Enforcement.**

(1) ~~OCSS~~CSS takes action to enforce past-due support and support for a prior period, per OAC 340:25-5, Part 23.

(2) ~~OCSS~~CSS collects amounts from the date of the original child support order, including any judgments for support for a prior period, and does not limit collection of past-due child support to amounts accruing from the time a case is opened or reopened.

(3) When a case new to ~~OCSS~~CSS or a case that was previously closed reopens and has an existing order, ~~OCSS~~CSS does not calculate a past-due support balance or take action to enforce past-due support until 30-calendar days from the mailing date ~~of mailing~~ of the notice of case letter and affidavit of payments document to the NCP. This does not preclude the initiation of an income assignment to collect current support.

(4) Past-due child support remains due to the CP with whom a child resided during the month the past support was due.

(5) When ~~OCSS~~CSS takes action to enforce past-due support and support for a prior period for a child of ~~a~~ an NCP or a CP who is a servicemember, ~~OCSS~~CSS applies the provisions of the Servicemembers Civil Relief Act, codified in ~~Sections 501~~50 U.S.C. §§ 3901 through ~~596 of Title 50A of the United States Code~~ 4043.

(d) **Settlement of past support.**

(1) Settlements of past support may include:

(A) ~~a~~an NCP's lump sum partial payment or a series of payments made toward the total amount of past support;

(B) an agreement for the NCP to pay a specified number of current child support payments in the future; and

(C) acceptance of in-kind goods or services in exchange for waiving a certain amount of past child support.

(2) Settlements of past support must be memorialized in a court order and the CP must sign the court order when the past support is owed to the CP.

(3) Per 43 O.S. § 112, ~~OCSS~~CSS:

(A) acknowledges the rights of the CP and NCP to mutually agree to waive with approval of the court, all or a portion of the past child support due to the CP; or

(B) may negotiate the right to collect all or part of past support owed to Oklahoma.

(e) **Annual notice.** ~~OCSS~~CSS uses the annual notice to the NCP parent, per 56 O.S. § 237A to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions, per OAC 340:25-5, Part 23.

(f) **Death of ~~custodial person~~CP.**

(1) When the CP dies, ~~OCSS~~CSS issues child support payments for past due support to:

(A) the decedent's estate, when notified in writing by the administrator of the estate; or

(B) any state owed past due support, per OAC 340:25-5-351.

(2) Except as provided in (1) of this subsection, ~~OCSS~~CSS refunds payments to the:

(A) payor, when the payor's address is known;

(B) NCP parent when the payor's address is unknown, or payments are returned due to the inability to distribute.

(3) ~~OCSS~~CSS does not file a forced probate court action to determine heirs and distribute past support to heirs.

(g) **Jurisdiction.** When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the NCP, ~~OCSS~~CSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce the child support orders.

340:25-5-140.1. Interest

(a) **~~General~~Legal authority.** Oklahoma Department of Human Services Child Support Services ~~(OCSS)~~(CSS) collects and enforces interest on past-due Oklahoma court-ordered child support payments, per Section 114 of Title 43 of the Oklahoma Statutes (43 O.S. § 114).

(b) **Support for a prior period.** ~~OCSS~~CSS collects interest on support for a prior period, ~~under~~ per Oklahoma Administrative Code (OAC) 340:25-5-179.1 and is calculated at a rate, per 43 O.S. § 114.

(c) **Accrual date.**

(1) Interest accrues on any unpaid portion of the monthly current child support obligation on the first day of the month following the:

(A) due date specified in the court order; or

(B) entry date of the child support order when a support order does not specify a due date.

(2) Interest accrues on a lump sum judgment for support for a prior period from the first day of the month after the judgment is entered, per 43 O.S. § 114.

(d) **Grace period and accrual.** ~~OCSS~~CSS has a grace period when interest is not charged. Interest begins to accrue from the first day of the month following the date the arrears are in excess of one month's current support.

(e) **Interest on cash medical support.** ~~OCSS~~CSS does not calculate or collect interest on unpaid cash medical support.

(f) **Servicemember relief.**

(1) Upon a servicemember's written request, an interest rate cap of 6 percent applies to child support arrearages of members of the military service incurred prior to the start of military service, per Section ~~527~~ 3937 of Title ~~50A~~50 of the United States Code.

(2) The servicemember must provide a written request for reduced interest and a copy of the military orders calling the servicemember to service and any orders further extending military service to ~~OCSS~~CSS no later than 180-calendar days after the date of the servicemember's termination or release from military service.

(3) Upon receipt of these documents, ~~OCSS~~CSS applies the 6 percent interest rate to child support arrearages existing as of the date when the servicemember is called to military service and throughout the active military service.

(4) ~~OCSS~~CSS may initiate a court action to challenge the claim that the servicemember's military duty ~~has~~ materially affected his ability to pay an interest rate over 6 percent.

(g) **Interest rate.**

(1) ~~OCSS~~CSS calculates simple interest, per 43 O.S. § 114.

(2) For orders established in other states, the law of the state entering the order determines the amount and rate of interest due until a determination of controlling order is made.

(3) For orders established in Oklahoma, Oklahoma law determines the amount and rate of interest due.

(4) When there are multiple child support orders and Oklahoma is determining the controlling order, ~~OCSS~~ CSS determines the rate of interest charged, per 43 O.S. § 601-604.

(h) **Order silent as to interest.** When an order that settles or determines a past-due child support amount is silent as to interest, the party with the right to collect has not waived the interest.

(i) **Enforcement.** Accrued interest is considered child support. Interest is included in enforcement remedies.

(j) **Incoming interstate cases.** In the absence of an Oklahoma order, ~~OCSS~~CSS collects interest on incoming interstate cases when an initiating state calculates the interest owed and requests that ~~OCSS~~CSS collect it.

(k) **Outgoing interstate cases.** Before requesting a responding state to enforce a child support order(s) entered in a state other than the responding state, ~~OCSS~~CSS calculates the arrears including the accrued interest claimed.

(l) **Application of payments to interest.** ~~OCSS~~CSS applies payments to interest per OAC 340:25-5-351.

(m) **Waiver of interest.** ~~OCSS~~CSS acknowledges the rights of the custodial person (CP) and noncustodial parent (NCP) to mutually waive, with approval of the court, all or a portion of the interest due to the CP.

(1) ~~OCSS~~CSS may negotiate the right to collect all or part of the interest owed to Oklahoma.

(2) Settlements of interest must be memorialized in a court order and may include:

(~~1~~A) ~~a~~an NCP's lump sum partial payment or a series of payments; or

(~~2~~B) an agreement for the NCP to pay:

(~~A~~i) a specified number of current child support payments in the future; or

(~~B~~ii) non-cash support.

(n) **Reopening closed cases.** ~~OCSS~~CSS does not reopen closed child support cases at the request of a customer for the purpose of collecting interest.

(o) **Interest on spousal support.** CSS does not calculate or collect interest on spousal support.

PART 20. MEDICAL SUPPORT

340:25-5-168. Establishment of medical support

(a) **Scope and applicability.** Oklahoma Department of Human Services (DHS) Child Support Services (CSS) refers to federal and state law for establishment of a medical support order, per:

(1) Section 666 of Title 42 of the United States Code;

(2) Sections 302.33, 302.56, 303.7, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; and

(3) Section 6058A of Title 36 of the Oklahoma Statutes (36 O.S. § 6058A), 43 O.S. §§ 112, 118-118I, 118.2 and 119, and 56 O.S. § 237.

(b) **Medical support provision of child support order.** A child support order established by CSS must contain a medical support provision.

(c) **Calculating the cost of medical support.** To calculate the actual premium cost of health insurance, CSS:

(1) deducts from the total insurance premium, the cost of coverage for the parent;

(2) deducts from the total insurance premium, the cost of coverage for any other adults in the household, when that cost information is available;

(3) divides the remainder by the number of dependent children covered; and

(4) multiplies the amount per child by the number of children in the child support case under consideration.

(d) **Standards for medical support provision.** When choosing a medical support provision, CSS requests the court to apply the standards in ~~paragraphs~~ (1) through (3) of this subsection.

(1) Health insurance must be reasonable in cost, meaning that the pro rata share of the actual out-of-pocket premium cost paid for the child(ren) by the insured does not exceed five percent of the gross income of the parent ordered to provide health insurance.

(2) Health insurance must be accessible, meaning the health care providers must be available to meet the child(ren)'s individual health care needs, and must be located no more than 60 miles one-way from the primary residence of the child(ren).

(3) Health insurance must provide coverage for both routine and major medical expenses including, but not limited to: preventive care, office visits, hospitalization, and medication coverage in compliance with the Oklahoma Insurance Department, per Oklahoma Administrative Code (OAC) 365:10-5-3(14) and OAC 365:10-5-5(f).

Limited Insurance Coverage, per OAC 365:10-5-5(k) does not satisfy this requirement. Annual deductibles must be reasonable and relate to the medical circumstances of the child(ren).

(e) **Exceptions to standards for medical support provision.** When the parents agree or it is otherwise appropriate, CSS requests the court make an exception to the standards for health coverage when the:

(1) reasonable cost of health insurance exceeds five percent of the gross income of the parent ordered to provide health insurance; or

(2) closest insurance provider exceeds 60 miles one-way from the primary residence of the child(ren).

(f) **~~Hierarchy of medical support provisions~~Selection of health care coverage.** ~~The provision for medical support must be consistent with one of the priorities listed in (1) through (4) of this subsection.~~

~~(1) Health insurance is provided through a parent's employer or other available group health insurance plan.~~

~~(2) No coverage is available under (1) of this subsection, and a private insurance policy or group health insurance is available to the child(ren) through another source, such as a third party custodian or spouse of a parent, CSS seeks an order for the:~~

~~(A) parent to provide health insurance when insurance is provided through the spouse of a parent; or~~

~~(B) third party custodian to provide health insurance when insurance is provided through a third party custodian and the third party custodian requested an order to provide the coverage.~~

~~(3) No health coverage is available under (1) or (2) of this subsection, and alternative health coverage including, but not limited to, Indian Health Services (IHS) and Defense Eligibility Enrollment Reporting System (DEERS) is available to the child(ren).~~CSS requests the court consider the cost, quality and accessibility of health care coverage available to the parties when entering a medical support order.

~~(4) When none of the provisions in (1) through (3) of this subsection are available at reasonable cost or are not accessible, the custodial person (CP) is required to make application for the child(ren) for health coverage through a government medical assistance program, such as SoonerCare (Medicaid).~~

(g) **Health coverage preference.** When health coverage meeting standards in (d) of this Section is available to both parents, CSS requests the court give priority to the preference of the CP.

(h) **~~Exceptions to hierarchy~~Applicability of cash medical support.** CSS requests a cash medical order ~~instead of an order for health coverage~~ by the ~~noncustodial parent (NCP) per (f)(1) or (2) of this Section~~obligor, when~~the~~:

(1) the court determines an order for health insurance is inappropriate due to family violence concerns; or

(2) ~~obligor is an applicant for a governmental medical assistance program, such as Insure Oklahoma, State Children's Health Insurance Program (S-CHIP), or SoonerCare (Medicaid).~~the only health care plan available for the child is a governmental medical assistance program or health plan, such as SoonerCare (Medicaid); or

(3) there is no health care plan available for the child(ren).

(i) **Cash medical support.**

(1) When ~~(f)(4) of this Section is chosen as the provision for medical support~~cash medical support is applicable, CSS requests the court order cash medical support to be paid by the ~~NCPs~~obligor until ~~insurance is provided per (f)(1) through (3) of this Section~~the obligor enrolls the child(ren) in accessible insurance coverage and provides proof of enrollment to CSS and the CP.

(2) CSS refers to the Cash Medical Income Guidelines Table as found in the child support computation form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network site per 43 O.S. § 120 to determine the cash medical support amount.

(3) CSS computes a cash medical order by applying the Cash Medical Income Guidelines Table, using the gross income for the noncustodial person (NCP) of the child in the case under consideration and the number of children in the instant case.

(A) When the NCP's gross income is at or below the income amount for the number of children in the case, CSS requests the court order a cash medical order at $0 per month.

(B) When the NCP's gross income exceeds the income amount for the number of children in the case, CSS computes the requested cash medical order by:

(i) multiplying the amount of $115, representing the average monthly cost of health care for an uninsured child(ren), by the number of children in the case not covered by insurance; and

(ii) prorating the result by the percentage of income for each parent.

(C) The NCP's share of the cash medical amount is added to the child support obligation.

(D) CSS does not request the court set cash medical support against a parent who has ~~equally shared physical custody with~~ at least 182 overnights.

(4) Unless the parties agree or the court orders a greater amount, the prorated cash medical support amount must not exceed five percent of the gross income of the parent who is ordered to pay cash medical support.

(5) CSS seeks cash medical support only as part of a prospective order for child support. CSS does not include a cash medical support amount in a judgment for support for a prior period per OAC 340:25-5-179.1.

(6) In a child support modification action, CSS requests a cash medical support order be effective the ~~first day of the month following the date the modification order is entered~~same date the modified child support amount is effective, unless the parties agree to a different date or the change in health coverage cost or availability occurred on a later date.

(7) In a multiple case action, when the monthly child support amount in the combination child support computation form exceeds 20 percent of the NCP's gross income, CSS may request a deviation to set cash medical support at $0 per month in the individual computation forms as applicable.

(j) **Medical support for DHS adopted children.** CSS does not request health insurance or cash medical support for children who are adopted through DHS Adoption Services. CSS requests a medical support order reflecting that the child(ren) receive SoonerCare through the adoption plan. The parties may agree to cover the child(ren) on health insurance.

(k) **Termination of cash medical support.**

(1) When CSS receives notice the parent ordered to pay cash medical support enrolled the child(ren) in health insurance, CSS sends a Notice of Proposed Termination of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is not covered by accessible health insurance, a party may request a review of the termination of cash medical support within 10-calendar days from the date of mailing of the notice.

(2) When a party requests a review to contest the Notice of Proposed Termination of Cash Medical Support, CSS reviews the case within 10-calendar days of receipt of the request and determines if termination of cash medical support is proper based on information provided by the contesting party. CSS notifies the parties of the review decision.

(3) When the parties disagree with the review decision, the parties have 15-calendar days from the date of mailing the review decision to request a hearing on the termination of cash medical support.

(4) CSS files a Notice of Termination of Cash Medical Support with the proper court when no party requests a:

(A) review within the 10-day time period; or

(B) hearing after CSS notifies them of the review decision.

(5) CSS does not proceed with a separate termination of cash medical support when the child support and medical support order is modified within 30-calendar days of notification that the child(ren) is enrolled in health insurance.

(6) When a cash medical support order is terminated within a modification action, CSS requests the termination become effective the date of filing of the Motion to Modify or the date, if later when the child was actually enrolled in the insurance.

(l) **Reinstatement of cash medical support.**

(1) CSS seeks reinstatement of the cash medical order when:

(A) a child support court order previously ordered the NCP to pay cash medical support until insurance was available;

(B) insurance became available;

(C) the cash medical support was terminated; and

(D) the insurance subsequently lapsed.

(2) CSS uses one of the ~~following~~ processes listed in (A) or (B) of this paragraph to seek reinstatement of the cash medical order~~:~~.

(A) **Modification.** CSS seeks modification of the child support order and reinstatement of cash medical support per OAC 340:25-5-198.1 and OAC 340:25-5-198.2 when:

(i) the child support order that provided for cash medical support was modified to include credit for insurance premium costs; or

(ii) there is another material change of circumstance in addition to the lapse of health coverage.

(B) **Expedited Process.** When (A) of this paragraph does not apply, CSS uses an expedited process to reinstate the cash medical support. CSS uses the expedited process when there is an address of record for the obligor.

(3) CSS initiates a reinstatement of cash medical support when it receives notice the parent whose cash medical support was terminated due to the enrollment of the child(ren) in health insurance has allowed the coverage to lapse. CSS sends a Notice of Proposed Reinstatement of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is covered by health insurance, a party may request a review of the reinstatement within 10-calendar days of the date the notice was mailed.

(4) A party may file a written objection to the reinstatement of cash medical support and submit it to CSS with supporting health care coverage documentation. CSS reviews the case within 10-calendar days of receipt of the objection and determines if reinstatement of cash medical support is proper based on the information provided by the contesting party. CSS provides the CP and the NCP with written notice of the review decision.

(5) When the parties disagree with the review decision, they have 15-calendar days from the date of the review decision to request a hearing.

(6) CSS files a Notice of Reinstatement of Cash Medical Support with the proper court when no party requests a:

(A) review within the 10-calendar day time period; or

(B) hearing after CSS notifies them of the review decision.

(m) **Fixed medical costs.** When the parties agree or the court orders, CSS includes the total monthly fixed medical costs in the child support guidelines computation. When the obligor's share of fixed medical costs exceeds five percent of the obligor's gross income and the parties do not agree to exceed the five percent standard, CSS requests the court determine the monthly amount of fixed medical costs included in the current child support order.

(n) **Indian Health Services (IHS).**

(1) A child support order that provides for the enrollment of a child(ren) in IHS may comply with the standards in (d) of this Section. CSS seeks an order for either or both parents to secure health insurance for the minor child(ren) when:

(A) IHS does not meet the standards in (d) of this Section; or

(B) health insurance is available through an employer or other group plan and the CP requests it.

(2) CSS does not request cash medical support when IHS is the chosen provider.

(o) **Notification requirements.** The NCP and the CP must notify CSS in writing within 30-calendar days after:

(1) health insurance becomes available;

(2) the cost of existing health insurance changes; or

(3) other provisions of existing health insurance change.

(p) **Modification request.** When a child support order exists, CSS considers a request to establish a medical support order as a request for modification of the order per 43 O.S. § 118.1. CSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.

PART 21. ESTABLISHMENT

340:25-5-176. Establishment of parentage

(a) **Legal authorities.** ~~In cases where parentage has not been legally established,~~ Oklahoma Department of Human Services Child Support Services (CSS) establishes parentage and provides genetic testing when appropriate based on the facts of the case, per:

(1) Sections 653, 654, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 653, 654, & 666);

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Sections 83, 90.4, and 7700-101 through 7700-902 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 83, 90.4, and 7700-101 - 7700-902), 43 O.S. §§ 601-201, 601-401, & 601-701, 56 O.S. §§ 230.60, 231 - 240.23, and 63 O.S. §§ 1-311 and 1-321.

(b) **Legal parents.** CSS ~~only initiates a parentage action when the child has only one legal parent. A child has a legal parent, when:~~

~~(1) paternity was voluntarily acknowledged in Oklahoma or another state and not rescinded within 60 calendar days, per 10 O.S. §§ 7700-301 through 7700-314;~~

~~(2) the child has a presumed parent, per 10 O.S. § 7700-204; or~~

~~(3) parentage was established by a district or administrative court order, per 10 O.S. § 7700-636~~applies the presumptions in 10 O.S. § 7700-204(A)(1) through (4) to an individual when the individual and the woman who gave birth to the child are married. CSS applies the presumption in 10 O.S. § 7700-204(A)(5) to an individual regardless of gender. CSS requests the court confirm parentage in cases where the individual is a presumed parent.

(c) **Acknowledgment of Paternity.** Form 03PA209E, Acknowledgment of Paternity, can only be completed by the biological mother and biological father of the child, per 10 O.S. § 7700-301. CSS provides Form 03PA209E, Acknowledgment of Paternity, for voluntary acknowledgment of paternity per 10 O.S. § 7700-312 and 63 O.S. §§ 1-311 & 1-311.3. CSS also provides companion forms that include instructions for completion, described (1) through (4) of this subsection. Signed and witnessed forms must be filed with the Oklahoma State Department of Health (OSDH), Division of Vital Records.

(1) When parents of an adult child, 18 years of age or older, complete Form 03PA209E, the adult child must give consent to add the natural father's name to the birth certificate. The child indicates consent by signing Form 03PA212E, Adult Child's (18 Years or Older) Consent.

(2) Form 03PA210E, Denial of ~~Paternity~~Parentage, must accompany Form 03PA209E if the mother of a child is married to someone other than the natural father and the child is born within 300 calendar days after the marriage is terminated per 10 O.S. § 7700-204.

(3) Per 10 O.S. §§ 7700-307 & 7700-312, CSS provides Form 03PA211E, Rescission of Acknowledgment of Paternity, ~~for a person to use CSS~~ to ~~cancel~~rescind the legal finding of ~~paternity~~parentage created by having previously signed Form 03PA209E. This form must be completed, signed, and filed with the OSDH Division of Vital Records within 60 calendar days after the date of the last signature on Form 03PA209E.

(A) When a person submits Form 03PA211E within 60 calendar days after the date of the last signature on Form 03PA209E, CSS sends notice of the rescission to all other signatories on Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last-known address of the signatories, if different.

(B) When rescissions are submitted to CSS past the 60 calendar day time period, CSS sends a letter to the person who submitted Form 03PA211E informing the person the rescission is invalid because it was not timely submitted.

(4) Per 10 O.S. §§ 7700-307 & 7700-312, CSS provides Form 03PA213E, Rescission of Denial of ~~Paternity~~Parentage, ~~for a person to use CSS~~ to ~~cancel~~rescind the legal finding of ~~paternity~~parentage created by having previously signed Form 03PA210E. Form 03PA213E must be completed, signed, and filed with the OSDH Division of Vital Records within 60 calendar days after the date of the last signature on Forms 03PA209E and 03PA210E.

(A) When a person submits Form 03PA213E to CSS within 60 calendar days after the date of the last signatures on Forms 03PA209E and 03PA210E, CSS sends notice ~~of the rescission~~ to all other signatories of Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of ~~the rescission~~Form 03PA213E, to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last known addresses of the signatories, if different.

(B) When ~~a rescission of denial~~Form 03PA213E is submitted to CSS past the 60 calendar day time period, CSS sends a letter to the person who submitted Form 03PA213E informing the person the rescission

of denial of parentage is invalid because it was not timely submitted.

(d) **Servicemembers.** When CSS establishes parentage and either parent is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in ~~50A~~50 U.S.C. §§~~501-596~~3901 through 4043.

(e) **Genetic testing of relatives.** When CSS has the cooperation of a deceased alleged biologicalfather's relatives, CSS establishes ~~paternity~~parentage of the child(ren) through genetic testing of the relatives as necessary according to the standards and provisions of the Uniform Parentage Act, 10 O. S. §§ 7700-501-7700-511.

(f) **Supplemental Security Income (SSI).** CSS establishes parentage against a parent who is disabled and receiving monthly ~~Supplemental Security Income~~SSI before reviewing the case for possible closure, per Oklahoma Administrative Code (OAC) 340:25-5-123.

(g) **Defaults.**

(1) CSS pursues all alleged biological fathers before requesting the court enter a default ~~paternity~~parentage order~~when the custodial person (CP) has provided information that more than one man is possibly the child's biological father~~.

(~~1~~A) CSS requests a default order when genetic testing shows one alleged father is the biological father or all other alleged fathers have been excluded by genetic testing. CSS uses other legal processes to compel genetic testing, such as license revocation or contempt of court proceedings.

(~~2~~B) CSS requests the court determine ~~paternity~~parentage when unable to obtain genetic testing on two or more alleged biological fathers.

(~~h~~2) CSS does not request a default ~~paternity~~parentage order when the alleged biological father is the case applicant and the CP objects to the alleged biological father being found the father without genetic testing. When a default ~~paternity~~parentage order is entered and either party contacts CSS in writing within 30-calendar days of entry of the default order, CSS treats the request as a motion to rehear, vacate, or modify, per 12 O.S. § 1031.1. CSS takes necessary steps to bring the action before the court for resolution.

(~~i~~h) ~~Genetic testing costs~~**Genetic testing costs.** Costs incurred in ~~paternity~~parentage establishment cases are paid ~~as follows:~~per (1) through (4) of this subsection.

(1) CSS advances the costs for genetic testing and recovers the genetic test costs from the noncustodial parent or as ordered by the court.

(2) When CSS ~~paternity~~genetic test results are contested, CSS requests payment in advance of a second genetic test by the requesting party.

(3) When a court orders CSS to provide genetic testing and CSS does not have a case open for services, CSS requires a party to complete an application for services~~prior to advancing the costs of genetic testing~~.

(4) In interstate cases, CSS follows OAC 340:25-5-270.

(i) **Genetic testing services.**

(1) When parentage has not been established, CSS performs genetic testing when appropriate before establishing parentage and child support orders. CSS only performs genetic testing in open, full-service cases.

(2) The case applicant may apply for case closure, per OAC 340:25-5-123 after parentage and child support are established.

(3) CSS does not provide genetic testing only services.

340:25-5-176.1. Challenges to establishment of parentage

(a) Oklahoma Department of Human Services Child Support Services (CSS) objects to a parentage challenge proceeding, when:

(1) a party challenges an acknowledgment of paternity (AOP) outside of the rescission time periods per Section 7700-307 of Title 10 of the Oklahoma Statutes (10 O.S. § 7700-307), unless the challenge is filed within the two-year time limit for challenges per 10 O.S. § 7700-308. When a party challenges an AOP within the statutory time limit, the state's attorney reviews the facts of the case to determine whether an objection is appropriate under the circumstances. CSS may object to the proceedings and request the court require the challenging party to prove fraud, duress, or material mistake of fact by clear and convincing evidence;

(2) the child has a presumed parent and a party initiates a challenge more than two years after the child's birth, unless the parties meet the jurisdictional requirements per 10 O.S. § 7700-607(B) or 7700-607(C); or

(3) parentage was established by a district or administrative court order per 10 O.S. § 7700-636 and the challenging party is filing outside the 30-calendar day time period to vacate a judgment per 12 O.S. § 1031.1(A).

(b) CSS does not object to a parentage challenge proceeding when the:

(1) time requirement to rescind an acknowledgment of paternity has not passed;

(2) parties neither cohabited nor engaged in sexual intercourse and the spouse never held out the child as his or her own, per 10 O.S. § 7700-607(B); or

(3) mother, legal parent, and biological father agree to adjudicate parentage, per 10 O.S. §~~7700-607~~7700-607(C).

(c) When a parentage challenge proceeding is brought by a child per 10 O.S. § 7700-637, the state's attorney reviews the facts of the case and determines whether an objection is appropriate under the circumstances.

(d) When one or both parties timely objects, orally or in writing, to the entry of an order for a child with a presumed parent or alleged father, CSS takes necessary steps to bring the parentage challenge before the appropriate court for resolution.

(e) CSS may initiate a parentage challenge when appropriate.

(f) In any parentage proceeding, CSS requests the court comply with the applicable provisions of the Uniform Parentage Act, including:

(1) the appointment of a guardian ad litem, when appropriate, per 10 O.S. § 7700-608(C);

(2) a best interest of the child hearing, per 10 O.S. § 7700-608(A) and (B); and

(3) genetic testing under 10 O.S. §§ 7700-631 and 621.

340:25-5-178. Calculation of new and modified child support obligations

(a) **Legal authority.** Oklahoma Department of Human Services (DHS) Child Support Services (CSS) establishes current child support, per:

(1) Sections 654, 656, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 654, 656, and 666);

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Section 83 of Title 10 of the Oklahoma Statutes (10 O.S. § 83); Title 43; and 56 O.S. §§ 231 through 240.23.

(b) **Child support guidelines.** CSS uses the child support guidelines in 43 O.S. §§ 118-118I and 119 to:

(1) establish the amount of current support; and

(2) prepare a child support computation form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website per 43 O.S. § 120.

(c) **Child support computation.** Per 43 O.S. §§ 118-118I, CSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting fair and equitable child support orders. When requesting the court enter or modify child support orders in a noncustodial parent's (NCP) multiple cases, CSS may request the court deviate from the child support guidelines amounts per 43 O.S. § 118H.

(d) **Gross income.** When determining gross income for the child support computation, CSS uses (1) through (4) of this subsection per 43 O.S. § 118B.

(1) **Written earning record.** For time periods when a parent has a written earning record, CSS uses the:

(A) actual monthly gross income; or

(B) average of the gross monthly income for the time actually employed during the previous three years.

(2) **Ability to work and no written earning record.** For time periods when a parent has an earning ability, but no written earning records, CSS imputes the most equitable of the:

(A) minimum wage paid for a 40-hour work week; or

(B) amount of gross income a person with comparable education, training, and experience could reasonably expect to earn.

(3) **Combination.** For time periods when a parent has a written earning record for some months, but no written earning record for other months, for the months worked CSS uses the actual income and for the months with no written earning record CSS uses the most equitable of either:

(A) the actual gross income; or

(B) an imputed amount of either:

(i) minimum wage paid for a 40-hour work week; or

(ii) the amount of gross income per person with comparable education, training, and experience could reasonably expect to earn.

(4) **Reduced earning ability.** CSS uses actual income when a parent has reduced earning ability due to the parent's limited education, physical or mental disability, incarceration, or other obstacle to employment, and there is evidence the parent has income of less than minimum wage for 40 hours per week.

(e) **Child care.** To establish the amount of current support, CSS considers "actual" child care expenses to be the amount paid to the child care provider by the parent(s) or custodial person (CP) except when (f) of this Section applies. CSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the NCP becomes part of the fixed monthly child support obligation.

(f) **Child care subsidy.** When the parent(s) or CP is participating in the DHS Child Care Subsidy Program per 56 O.S. § 230.50, CSS uses DHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine the family share co-payment amount considered as actual child care costs on the child support computation form per 43 O.S. § 118G.

(1) CSS considers a parent's share of the base monthly obligation for child support and the monthly income amount reflected in the records of the DHS Child Care Subsidy Program as the monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, CSS uses the corresponding family share co-payment amount based on the number of children in DHS subsidized child care. CSS allocates the family share co-payment amount indicated on Appendix C-4, in the same proportion as base child support. CSS staff performs a separate child support guidelines calculation for each NCP.

(2) When a parent has a child(ren) in DHS subsidized child care other than a child(ren) included in the child support case being established, CSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(g) **Juvenile Court cases.**

(1) **Deprived cases.** When a case is referred, CSS establishes child support orders in deprived court actions per 10A O.S. § 1-4-702 and prepares the child support order on the standard child support order form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website.

(2) **Delinquent cases.** When a case is referred, CSS establishes a child support order against each parent of a child in the custody of the Oklahoma Office of Juvenile Affairs per 43 O.S. §§ 118 through 118I.

(h) **Intergovernmental majority age.** CSS establishes child support orders for a child(ren) for whom child support is imposable under applicable law.

(i) **Minor parents.** When ~~the NCP~~a parent is a minor, CSS establishes paternity per Oklahoma Administrative Code 340:25-5-176 when necessary and establishes a child support order.

(1) When a minor NCP or a CP is under 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income.

(2) When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week or actual income.

(j) **Adult disabled child.** CSS enforces child support orders for adults with disabilities per 43 O.S. § 112.1A. CSS establishes or modifies child support orders to continue after the child reaches the age of majority per 43 O.S. § 112.1A when the application or referral for Title IV-D services is received during the period when child support is due per 43 O.S. § 112.

(k) **Incarcerated NCP.** When an NCP is expected to be incarcerated for at least six consecutive months from the date the support amount is reviewed or established, CSS requests the court enter a temporary child support and medical support amount using actual income of $0, unless there is evidence of income or assets outside of the correctional institution. At the time the order is entered, when there is:

(1) a pre-incarceration child support order, CSS requests the order state that upon release from incarceration, the monthly child support obligation reverts back to the pre-incarceration order amount beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration. When the NCP within the lapse period, requests in writing a review of the pre-incarceration order, the post incarceration monthly child support obligation does not begin until the review or modification is complete. When a review is requested and the NCP fails to appear for hearing, the monthly child support obligation reverts back to the pre-incarceration amount to begin the first day of the month following a lapse of 90-calendar days upon release from incarceration; or

(2) no pre-incarceration child support order, CSS requests the court order state~~;~~ upon release from incarceration, the monthly child support amount is set based on minimum wage for a 40-hour work week beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration. When the NCP within the lapse period requests in writing a hearing, the post incarceration monthly child support amount does not begin until the review or modification is complete. When a hearing is requested and the NCP fails to appear for the hearing, the monthly child support obligation reverts back to the support amount set based on minimum wage for a 40-hour work week, to begin 90-calendar days upon release from incarceration.

(l) **Military.** When CSS establishes a child support order for a child of an NCP or a CP who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in ~~50A~~50 U.S.C. §§~~501 through 596~~ 3901 through 4043.

(m) **Disability benefits.** CSS does not impute gross income to a person determined disabled by the Social Security Administration.

(n) **Default orders.** When a default order for child support is ordered and either party contacts CSS in writing within 30-calendar days of entry of the default order and provides information to calculate an accurate child support obligation, CSS treats the request as a motion to vacate or modify, and requests the court enter a new order consistent with the evidence presented.

340:25-5-179.1. Establishment of support for a prior period

(a) Oklahoma Department of Human Services Child Support Services (CSS) establishes support for a prior period.

(1) ~~When paternity is being established by court order or when paternity has been previously established by a signed Form 03PA209E, Acknowledgment of Paternity,~~In parentage cases, CSS establishes current support and support for a prior period at the same time per Sections 83 and 7700-636 of Title 10 (10 O.S. §§ 83 and 7700-636), 43 O.S. §§ 118-118I and 119, and 56 O.S. § 238.6B.

(2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, CSS establishes support for a prior period per 43 O.S. §§ 118-118I and 119 and 56 O.S. § 238.1.

(A) CSS establishes support for a prior period ~~under this subsection~~ only when:

(i) current child support is sought; and

(ii) Temporary Assistance for Needy Families (TANF) or Title IV-E and non-Title IV-E eligible foster care has been expended in any month during the past two years.

(B) ~~CSS may issue a Notice of Support Debt or file a district court action to establish support for a prior period.~~ CSS limits this prior period to the number of months on TANF or Title IV-E and non-Title IV-E eligible foster care during the two years immediately before the date CSS ~~issues the Notice of Support Debt, or~~ files the ~~district~~ court action.

(b) When a child support order is entered against a minor noncustodial parent (NCP), CSS establishes support for a prior period under the criteria for establishing current child support per Oklahoma Administrative Code (OAC) 340:25-5-178.

(c) CSS does not establish an order for support for a prior period on an incarcerated NCP. CSS requests the court:

(1) reserve and not determine the amount of child support for ~~the period~~any periods prior to the entry of the court order ~~through the time of incarceration to the date the current child support obligation begins per OAC 340:25-5-178~~during which the NCP was not incarcerated; and

(2) set the amount of support for a prior period at $0 for any time periods during which the NCP was incarcerated.

(d) When CSS establishes an order for support for a prior period for a child of an NCP or a custodial person who is a

servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections ~~501~~3901 through ~~596~~4043 of Title ~~50A~~50 of the United States Code.

(e) When the NCP is a current TANF or Supplemental Security Income (SSI) recipient and CSS:

(1) has information that the NCP had no obligation based on the child support guidelines for the prior period, CSS requests the court set the judgment at $0; or

(2) determines a debt may be owed for a prior period, CSS requests the court reserve the issue of support for a prior period until the NCP is no longer receiving TANF or SSI.

(f) CSS sets a monthly payment schedule per OAC 340:25-5-140.

PART 22. REVIEW AND MODIFICATION

340:25-5-198. Review and modification of support orders

In reviewing and modifying support orders as described in this Part, the Oklahoma Department of Human Services Child Support ~~Enforcement Division~~Services follows applicable provisions of:

(1) Title 43 and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes;

(2) Section 303.8 of Title 45 of the Code of Federal Regulations; and

(3) Section 666 of Title 42, Sections ~~501~~3901 through ~~596~~4043 of Title ~~50A~~50, and Section 1738B of Title 28 of the United States Code.

PART 23. ENFORCEMENT

340:25-5-200. Enforcement

(a) **Scope and applicability.** The Oklahoma Department of Human Services Child Support Services (CSS) follows Part D of Subchapter IV of Chapter 7 of Title 42 and Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B), Section 303.6 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.6), and Section 240.1 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.1) in initiating enforcement proceedings.

(1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts.

(2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment per 43 O.S. § 137.

(3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.

(4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the real and personal property of the noncustodial parent (NCP).

(b) **Non-Oklahoma support order.** CSS registers a support order from another state, Native American tribe, territory, or foreign country, per subsection (b) of the Full Faith and Credit for Child Support Orders Act codified in 28 U.S.C. § 1738B(b) and 43 O.S. § 601-101(21) when enforcement of the order is sought.

(c) **Multiple support orders.** When multiple child support orders are entered in the same or different tribunals involving the same NCP and child, CSS seeks a determination of controlling order, per 43 O.S. §§ 601-207, 601-307, and 601-601 through 601-603 and Oklahoma Administrative Code (OAC) 340:25-5-270.

(d) **Legal remedies.** CSS determines appropriate enforcement actions and may use any legal remedy to enforce support obligations. CSS chooses remedies designed to obtain compliance with an obligor's support obligations and does not use any remedy for the purpose of punishment. When an NCP is participating in the CSS problem-solving court program or complying with a seek work order, CSS considers the NCP's participation and compliance per OAC 340:25-5-200.3 when choosing enforcement remedies. Remedies CSS may use include, but are not limited to:

(1) annual notice to NCPs per 56 O.S. § 237A and OAC 340:25-5-213;

(2) income assignment, garnishment, and levy per Chapter 21 of Title 12, 43 O.S. §§ 115 and 601-501 through 601-507, 56 O.S. §§ 237, 240.2, and 240.23, and 42 U.S.C. § 666;

(3) hearing on assets, per 12 O.S. § 842;

(4) intercept of federal tax refunds, per 42 U.S.C. § 664, 31 C.F.R. § 285.3, and 45 C.F.R. § 303.72, OAC 340:25-5, Part 25. Intercept of state tax refunds per 45 C.F.R. § 303.102, 68 O.S. § 205.2, and OAC 340:25-5, Part 27;

(5) administrative offsets per 31 U.S.C. § 3716, 31 C.F.R. § 285.1, and Executive Order 13019;

(6) denial, revocation, or suspension of United States passports, per 56 O.S. § 240.1 and 42 U.S.C. §§ 652 and 654;

(7) revocation, suspension, non-renewal, and non-issuance of various licenses including, but not limited to, revocations of certificates of motor vehicle titles per 43 O.S. §§ 139 and 139.1 47 O.S. §§ 1-153, 6-201, 6-201.1, and 6-211, and 56 O.S. §§ 237.1 and 240.15 through 240.21A;

(8) imposing liens and executing and levying on personal and real property, including, but not limited to, workers' compensation benefits, personal injury, wrongful death, and probate actions per 43 O.S. § 135, 56 O.S. § 240.23, and Titles 12 and 58 of the Oklahoma Statutes;

(9) registration of foreign support orders per the Uniform Interstate Family Support Act per 43 O.S. §§ 601-100 through 601-903;

(10) credit bureau referrals per 42 U.S.C. § 666 and 15 U.S.C. § 1681b, 56 O.S. § 240.7, and OAC 340:25-5, Part 31;

(11) financial institution data match per 42 U.S.C. §§ 666 and 669A, 56 O.S. §§ 240.22 through 240.22G, and OAC 340:25-5-212;

(12) seek work orders per 56 O.S. § 240.10;

(13) indirect civil contempt of court per 21 O.S. §§ 566 and 567, 43 O.S. § 137, and 56 O.S. § 234. CSS does not use contempt as a penal sanction and does not recommend incarceration to the district court at sentencing in an indirect civil contempt proceeding unless there is evidence or information available that the obligor can purge the contempt. CSS asks the court to set a reasonable purge fee per Rule 8.3 of the Rules of the District Court;

(14) action to void the transfer or obtain favorable settlement in cases in which a debtor transferred income or property to avoid payment to a child support creditor per the Uniform Fraudulent Transfer Act, 24 O.S. §§ 112 through 123 and 42 U.S.C. § 666;

(15) registration of foreign judgments per the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §§ 719 through 726;

(16) criminal actions brought per 21 O.S. § 852;

(17) civil actions brought per 42 U.S.C. § 660;

(18) transfer of child support obligation to another custodian per 56 O.S. § 237;

(19) referral to the United States Attorney for federal prosecution per 18 U.S.C. § 228;

(20) full collection services by the Secretary of the Treasury per 6305 of the Internal Revenue Code of 1954; and

(21) attachment of lottery prize winnings from the Oklahoma Lottery Commission per 3A O.S. § 724.1.

(e) **Servicemember.** When CSS initiates proceedings to enforce a child support order for a child of an NCP or a custodial person who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, per ~~50A~~ 50 U.S.C. §§~~501~~3901 through ~~596~~4043.

340:25-5-212. Financial institution data match reporting system

(a) **Legal basis.** Oklahoma Department of Human Services Child Support Services (CSS) maintains a financial institution data match reporting system to identify noncustodial parents' (NCP) assets and issue levies on accounts of NCPs who are in noncompliance with an order for support. In maintaining the system, CSS follows Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, associated federal regulations, and state statutes. This Section establishes provisions necessary to implement Sections 666(a)(17) and 669A of Title 42 of the United States Code, Section 307.11 of Title 45 of the Code of Federal Regulations, and Sections 240.22 through 240.22G of Title 56 of the Oklahoma Statutes (56 O.S. §§ 240.22-240.22G). The definitions in 56 O.S. § 240.22A apply to the terms used in this Section.

(b) **Financial institutions.**

(1) All data supplied to CSS by financial institutions doing business in Oklahoma must be in accordance with the Financial Institution Data Match Specifications Handbook published by the federal Office of Child Support Enforcement.

(2) A financial institution may charge an account levied on by CSS a fee of $20, per 56 O.S. § 240.22E(E), which is deducted from the account before the financial institution remits funds to CSS. If the levied funds are subsequently refunded by CSS because there is a mistake of identity or the obligor did not owe three months of child support at the time of the levy, CSS refunds any fee charged to the appropriate account holder.

(c) **Levies.** Levies are for the total amount of past-due support per 56 O.S. § 237.7. Per 56 O.S. § 240.22G, CSS automatically issues a levy for each matched account unless the NCP ~~is in full and timely compliance with a court-ordered payment plan. CSS considers an NCP in full and timely compliance with a court-ordered payment plan when the NCP~~ has made voluntary payments of at least ~~92~~75 percent of the court-ordered payment plan payments due over the last ~~six full~~three full calendar months prior to the date of the levy. CSS considers a manual levy appropriate when there is evidence the ~~noncustodial parent~~NCP has funds subject to levy not previously considered by CSS in establishing the monthly court-ordered payment plan. CSS requests the financial institution not remit funds in an amount less than $50, unless otherwise ordered by the court.

(d) **Notice of levy and administrative review.**

(1) CSS sends a notice of levy to an NCP within three calendar days after sending the levy to the financial institution per 56 O.S. § 240.22G. The notice of levy includes:

(A) instructions for the NCP or a non-obligated joint account holder to request an administrative review in writing;

(B) a description of the grounds for requesting an administrative review;

(C) a description of the review process; and

(D) notice that failure to submit a timely request for review in writing means the levy is final.

(2) It is the responsibility of the NCP to notify any joint account holder(s) of the levy.

(3) Either the NCP or a non-obligated joint account holder may request an administrative review of the levy in writing after the date on the notice of levy per 56 O.S. § 240.22G.

(4) A non-obligated joint account holder may request an administrative review in writing when the levied funds are not owned by the NCP.

(5) Upon receipt of a request for an administrative review, CSS:

(A) contacts the requesting party within three business days to:

(i) notify the party the review has begun; and

(ii) request further information as necessary;

(B) completes the review as soon as possible, not to exceed three business days from receiving all necessary information; and

(C) completes the review using the best information available when the party requesting a review does not provide the information requested by CSS within five business days of the request.

(6) The purpose of the administrative review is to quickly resolve any obvious factual errors.

(7) After the administrative review, CSS issues a notice of administrative review decision and information about requesting an administrative hearing.

(e) **Administrative hearing.** Either the NCP or a non-obligated joint account holder may request a hearing before the Oklahoma Department of Human Services Office of Administrative Hearings: Child Support (OAH), by the date specified in the notice of administrative review decision. A request for an OAH hearing must be submitted in writing to the district office.

(f) **Release of funds from levy.**

(1) CSS releases funds from levy when the person requesting review of the levy submits sufficient and credible evidence at the administrative review that the source of the funds is:

(A) Supplemental Security Income (SSI) or concurrent SSI and Social Security Disability Insurance (SSDI) benefits;

(B) State Supplemental Payments (SSP) for Aged, Blind and the Disabled;

(C) Temporary Assistance for Needy Families (TANF) benefits;

(D) child support payments, when the obligor is the custodial person ~~(CP)~~ of a minor child(ren) and is receiving the payments as required by a court order; or

(E) the property of the non-obligated account holder.

(2) When the account contains funds from sources listed in (1) of this subsection as well as funds from other sources, CSS can levy the funds that are not from a source included in the list in (1) of this subsection.

(3) Funds from a levy may be released, in full or in part, at the discretion of the state's attorney~~when it is determined the levy negatively impacts a reliable source of child support, or is not in the best interest of the child(ren). When the funds are not assigned to the state and the source of the funds is not listed in (1) of this subsection, CSS considers the input of the CP when reviewing the case for release~~.

340:25-5-214. Passport denial, revocation, restriction, or limitation

(a) Section 652 of Title 42 of the United States Code (42 U.S.C. 652) provides for the United States Secretary of State to refuse to issue a passport to a person certified as owing child support debt. It also provides for action to revoke, restrict, or limit a passport already issued. If the amount of arrears owed by a person exceeds the threshold amount for certification set by federal law or regulation, Oklahoma Department of Human Services, Child Support Services ~~(OCSS)~~(CSS) may certify the person under ~~Section 654 of Title 42 of the United States Code~~42 U.S.C. 654 and Section 240.1 of Title 56 of the Oklahoma Statutes (56 O.S. 240.1).

(b) Before issuing a certification as described in (a) of this Section, ~~OCSS~~CSS provides notice to the noncustodial parent (NCP) of ~~OCSS~~CSS determination that the ~~noncustodial parent~~NCP owes child support debt, the consequences of the determination, and the opportunity to contest the determination through either:

(1) the annual notice process as established in ~~Section 237A of the Title 56 of the Oklahoma Statutes~~56 O.S. § 237A and ~~OAC~~Oklahoma Administrative Code (OAC) 340:25-5-213; or

(2) notice of federal offset under Section 303.72 of Title 45 of the Code of Federal Regulations and OAC 340:25-5, Part 25.

(c) If ~~OCSS~~CSS finds a request for certification was submitted in error, or in a life or death situation, ~~OCSS~~CSS requests immediate release of ~~a noncustodial parent's~~an NCP's passport from the process described in (a) of this Section.

(d) ~~OCSS~~CSS may request release of ~~a noncustodial parent's~~an NCP's passport from the process described in (a) of this Section if the ~~noncustodial parent~~NCP pays the entire child support debt or:

(1) pays the entire child support debt down to the threshold amount;

(2) enters into a repayment agreement or order to retire the remaining child support debt in not more than 36 equal monthly payments; and

(3) provides ~~OCSS~~CSS with a verified source of future income for which an income assignment may be issued for payment of all current support and arrears.

(e) A passport may be released from the passport referral process at the discretion of the ~~OCSS~~CSS director. The district office may request a director's exception when it is determined the passport denial, revocation, restriction, or limitation negatively impacts a reliable source of child support. ~~When the arrears are not assigned to the state, OCSS considers the input of the custodial person in reviewing the case for release from the passport referral process.~~

(f) After requesting release of a case from the passport referral process, ~~OCSS~~CSS may at any time recertify the case as described in (a) of this Section.

PART 31. CONSUMER REPORTING AGENCIES - CREDIT BUREAUS

340:25-5-265. Release of arrearage information to consumer reporting agencies - credit bureaus

(a) The Oklahoma Department of Human Services, ~~through its~~ Child Support ~~Enforcement Division (CSED),~~Services (CSS) periodically releases child support arrearage information to certain consumer reporting agencies - credit bureaus. Release of this information is governed by:

(1) Section 240.7 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.7); and

(2) Sections 1681b and 1681f of Title 15 and Section 666 of Title 42 of the United States Code (15 U.S.C. §§ 1681b & 1681f; 42 U.S.C. § 666).

(b) ~~CSED~~CSS reports to consumer reporting agencies the names and amounts of child support arrearages of noncustodial parents (NCP). ~~CSED~~CSS applies:

(1) a 15-day grace period to account for payment receipt date discrepancies due to early or late employer reporting if ~~a noncustodial parent~~an NCP is making child support payments through income assignment; and

(2) a two-month grace period to account for the delays in the start of the income assignment process for ~~a noncustodial parent~~an NCP who is a servicemember called to active duty under the provisions of the Servicemembers Civil Relief Act, codified in ~~Sections 501~~50 U.S.C. § 3901 through ~~596 of Title 50A of the United States Code~~4043.

(c) If the annual notice process under ~~Section 237A of Title~~ 56 ~~of the Oklahoma Statutes~~O.S. § 237A has been completed, ~~CSED~~CSS releases arrearage information to credit bureaus without additional notice.

(d) If the initial annual notice process under ~~Section 237A of Title~~ 56 ~~of the Oklahoma Statutes~~O.S. § 237A and Oklahoma Administrative Code (OAC) 340:25-5-213 has not been completed, ~~CSED~~CSS issues a written notice by regular mail to the person obligated to pay the support. The notice includes:

(1) a statement of the information to be released to credit bureaus; and

(2) instructions for disputing the accuracy of the information to be released under OAC 340:25-5-200.1.

PART 37. RECOVERY

340:25-5-305. ~~General overpayment~~Overpayment and recovery policies

(a) **Legal authority.** Oklahoma Department of Human Services (DHS), Child Support Services (CSS) recovers CSS overpayments per Title IV, Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code; Section 109.5 of Title 43 of the Oklahoma Statues (43 O.S. § 109.5); and 56 O.S. §§ 171, 185, and 231 through 244.

(b) **Purpose.** The rules in this Part:

(1) establish ~~Oklahoma Department of Human Services Child Support Services (~~CSS~~)~~ policies and procedures used to recover CSS overpayments to custodial persons (CPs), noncustodial parents (NCPs), and other entities; and

(2) resolve payment disputes arising from overpayments.

(~~b~~c) **Overpayment recipient and categories.** An overpayment means a CSS payment to a CP, NCP, or other entity to which the entity or person is not entitled. The recipient of the overpayment owes the amount to CSS, acting on behalf of the state of Oklahoma. Categories of overpayments are described in (1) through (3) of this subsection.

(1) Retained support occurs when the CP kept support payment(s) in violation of the assignment of support rights.

(2) Erroneous payment occurs when CSS incorrectly paid money to a CP, NCP, or other entity, or failed to retain money assigned to Oklahoma because of an administrative error.

(3) Bad debt occurs when:

(A) the funding for a payment made by CSS to a CP or NCP is subsequently withdrawn when a tax intercept or other collection is revoked;

(B) a check or other payment instrument received by CSS from an NCP or other payor on behalf of the NCP is dishonored after a payment was made to the CP; or

(C) CSS issues a payment to a CP based on an incorrect arrearage balance or an incorrect allocation of a payment.

~~(c) **Authority.** When recovering overpayments under this Part, CSS is governed by Title IV, Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code; Section 109.5 of Title 43 of the Oklahoma Statues (43 O.S. § 109.5); and 56 O.S. §§ 171, 185, and 231 through 244.~~

(d) **~~Recovery~~Overpayment recovery.**

(1) CSS may use any legal remedy to recover overpayments~~,~~ including, but not limited to~~, state tax offsets per OAC 340:25-5, Part 27~~:

(A) voluntary payments;

(B) state income tax refund intercepts per 68 O.S. § 205.2; and

(C) lottery prize claims, per 3A O.S. § 724.1.

(~~1~~2) When an overpayment resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or when fraud is otherwise suspected, CSS reports the information to the DHS Office of Inspector General for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.

(3) In active Temporary Assistance for Needy Families (TANF) cases, when a TANF recipient retains child support receipts, CSS may make a noncooperation referral to Title IV-A staff. CSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.

(e) **Recovery amount.**

(1) In order to recover child support overpayments, CSS retains 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time until the overpayment is recovered in full. The percent retained can be changed:

(A) at the CSS director's discretion; or

(B) when the CSS Center for Finance and Budget determines the overpayment was a result of fraud by the CP.

(2) When the CP received his or her full monthly support payment in the same month as an overpayment, CSS retains the full amount of any subsequent payments for that month up to the amount of the overpayment. CSS satisfies any remaining overpayment as set forth in (1) of this subsection.

(f) **Notice and administrative review.**

(1) CSS sends a notice of overpayment and recovery to the overpayment recipient. The notice includes the overpayment amount, payment withholding and collection remedies, and instructions for requesting an administrative review and hearing, per OAC 340:25-5-200.1.

(2) The administrative review provides an opportunity for the overpayment recipient to offer new or additional information regarding the amount of the overpayment. After the review, CSS issues a notice of administrative review decision.

(g) **Limits to overpayment recovery.**

(1) CSS is not responsible for creating or recovering overpayments for:

(A) non-Title IV-D time periods when non-Title IV-D cases convert to Title IV-D cases; or

(B) ~~time periods when CSS collected under a court order that was later vacated or after the case was dismissed; or~~

~~(C) time periods when CSS collected under a court order that was later modified and the parties failed to provide CSS a copy of the new order~~time periods when:

(i) CSS collected under a court order that was later vacated or after the case was dismissed;

(ii) the parties failed to provide CSS with verification of a change in physical custody of the child;

(iii) CSS collected under a court order that was later modified; or

(iv) CSS collected under a court order and the child was adopted.

(2) When a child support modification order is effective back to the date the motion to modify was filed and the modified support amount is less than the amount previously ordered and paid, CSS satisfies the amount due when the NCP owes past-due child support, by offsetting the arrears amount, up to the balances currently owed.

(~~2~~3) CSS does not charge, collect, or pay interest on overpayments.

(h) **Issuance of refunded amounts.** When an NCP makes an overpayment, amounts less than $3 are not refunded unless issued on an Electronic Benefits Transfer (EBT) card. Amounts less than $3 and not issued on an EBT card are remitted to the DHS General Revenue Fund Treasury.

(i) **Return of excess support amounts.** When CSS receives a payment in excess of the NCP's total arrears balance, CSS returns the excess amount to the payor within 45-calendar days after discovering the over collection;

(j) **Payments made in error.** When CSS receives a payment made due to an error on the part of the payor that was not disbursed, CSS returns it to the payor within 45-calendar days after discovery. CSS is not required to correct, redirect, or recover the payment unless it was retained;

(k) **Payments that cannot be disbursed to a party.**

(1) CSS applies support collections to other applicable balances associated with the NCP, such as assigned state balances or balances owed to another CP, when the:

(A) CP's address is unknown;

(B) CP fails to activate the debit card; or

(C) debit card is returned to the vendor,

(2) CSS remits a payment to the DHS General Revenue Fund Treasury, when the payment cannot be:

(A) disbursed to a CP;

(B) applied to assigned state balances associated with an NCP;

(C) disbursed to the NCP, when the:

(i) address is unknown;

(ii) debit card is not activated;

(iii) debit card is returned to the vendor; or

(D) returned to the payor.

340:25-5-312. Overpayment rules and procedures [REVOKED]

~~(a) **Overpayment recipient.** A custodial person (CP), non-custodial parent, or other entity to whom Oklahoma Department of Human Services (DHS) Child Support Services (CSS) has made an overpayment is an overpayment recipient and owes the amount of the overpayment to CSS, acting on behalf of the State of Oklahoma.~~

~~(b) **Fraud.** When an overpayment resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or when fraud is otherwise suspected, CSS reports the information to the DHS Office of Inspector General for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.~~

~~(c) **Recovery amount.**~~

~~(1) In order to recover child support overpayments, CSS retains 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time until the overpayment is recovered in full. The percent retained can be changed:~~

~~(A) at the discretion of the CSS director; or~~

~~(B) when the CSS Center for Finance and Budget determines the overpayment was a result of fraud by the CP.~~

~~(2) When the CP received his or her full monthly support payment in the same month as an overpayment, CSS retains the full amount of any subsequent payments for that month up to the amount of the overpayment. CSS satisfies any remaining overpayment as set forth in (1) of this subsection.~~

~~(d) **Notice.** CSS sends a notice of overpayment and recovery to the recipient of the overpayment. The notice includes:~~

~~(1) a statement that the recipient received money to which he or she was not entitled and owes money to CSS;~~

~~(2) the overpayment amount;~~

~~(3) the withholding method from monthly payments until the overpayment is recovered in full;~~

~~(4) a statement that CSS may collect the overpayment through any means permitted by law; and~~

~~(5) instructions for requesting in writing, an administrative review per Oklahoma Administrative Code (OAC) 340:25-5-200.1 within 30 calendar days after the date on the notice of overpayment and recovery letter, when the recipient disagrees with the amount.~~

~~(e) **Other overpayment recovery methods.** CSS recovers overpayments including, but not limited to:~~

~~(1) voluntary payments;~~

~~(2) state income tax refund intercepts per Section 205.2 of Title 68 of the Oklahoma Statutes (68 O.S. § 205.2); and~~

~~(3) lottery prize claims per 3A O.S. § 724.1.~~

~~(f) **Temporary Assistance for Needy Families (TANF) customers.** In active TANF cases, when a TANF recipient retains child support receipts, CSS may make a noncooperation referral to the TANF social services specialist. CSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.~~

~~(g) **Administrative review and hearing.**~~

~~(1) When an administrative review is requested per OAC 340:25-5-200.1, the purpose of the review is to provide the overpayment recipient an opportunity to offer new or additional information regarding the amount of the overpayment. Upon timely receipt of a written request for an administrative review, the CSS office conducts the review within 30 calendar days.~~

~~(2) After the administrative review, CSS issues a notice of administrative review decision and information about requesting an administrative hearing. The overpayment recipient may request in writing, a hearing within 20 calendar days after the administrative review decision date.~~

~~(3) Upon timely receipt of a written request for an administrative hearing, CSS schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.~~

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-350.1. Return of overcollected support amounts [REVOKED]

~~(a) When Oklahoma Department of Human Services (DHS) Child Support Services (CSS) receives a payment:~~

~~(1) in excess of the noncustodial parent's (NCP's) total arrears balance, CSS returns the excess amount to the payor within 45 calendar days after discovering the over collection;~~

~~(2) and the custodial person's (CP's) address is unknown, CSS applies support collections to any unreimbursed public assistance debt associated with the NCP;~~

~~(3) made due to an error on the part of the payor that was not disbursed, CSS returns it to the payor within 45 calendar days, after discovering the over collection. CSS is not required to correct, redirect, or recover the payment unless it was retained by DHS; and~~

~~(4) that cannot be disbursed to a CP or returned to the payor or NCP and there is no debt to the State of Oklahoma, CSS remits the payment to the DHS General Revenue Fund Treasury.~~

~~(b) When an NCP makes an overpayment, amounts less than $3 are not refunded unless issued on an Electronic Benefits Transfer (EBT) card. Amounts less than $3 and not issued on an EBT card are remitted to the DHS General Revenue Fund Treasury.~~

~~(c) CSS does not return over collected support amounts when the parties failed to provide CSS with:~~

~~(1) a copy of the modified or vacated order; or~~

~~(2) verification of a change in physical custody of the child.~~

~~(d) When a child support modification order is effective back to the date the motion to modify was filed and the modified support amount is less than the amount previously ordered and paid, CSS:~~

~~(1) satisfies the over collection when the NCP:~~

~~(A) owes past due child support, by crediting the arrears amount by the amount over collected; or.~~

~~(B) does not owe past due child support but owes current support, by offsetting the current child support by an amount each month to satisfy the over collected. Unless the parties agree to another amount, CSS requests the offset not exceed 25 percent of the current child support amount; or~~

~~(2) is not responsible for satisfying the over collection when there is no current or past due support due and the over collected support was not retained by the state.~~

340:25-5-350.3. Payment of support through Centralized Support Registry

(a) **Centralized Support Registry.** Oklahoma Department of Human Services (DHS) Child Support Services (CSS) operates a Centralized Support Registry (Registry), also known as the State Disbursement Unit, for the receipt, recording, allocation, distribution, and disbursement of support payments. CSS operates the Registry, per Sections 410 and 413 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 410 and 413), Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.51 and 303.100), and Sections 654b and 657 of Title 42 of the United States Code (42 U.S.C. §§ 654b and 657).

(1) This Section applies to both Title IV-D and non-Title IV-D cases, unless the context clearly indicates otherwise.

(2) When a non-Title IV-D child support case has an income assignment in place, the Registry processes child support payments received from unemployment compensation benefits as income assignments per federal and state law.

(b) **Support payments.**

(1) Support payments must be paid as instructed in writing by CSS to the Registry.

(2) CSS offices may accept support payments when a payment is made:

(A) in connection with a court action; or

(B) as part of a settlement agreement on a lien or levy.

(c) **Method of payment.** CSS may require payors and persons to provide information needed to identify and properly allocate and distribute payments and to submit payments to the Registry, per 43 O.S. § 413.

(1) Support payment amounts are converted from a foreign country's order amount to a United States (U.S.) dollar amount at the time ~~the order is registered~~of the referral or application and that exchange rate remains in place until the child support order is modified or the arrears are confirmed.

(2) CSS:

(A) allocates and distributes support payments, per Oklahoma Administrative Code (OAC) 340:25-5-351;

(B) modifies or enforces international orders, per OAC 340:25-5-285;

(C) safeguards case information and records received from payors and persons. Information and records concerning Title IV-D and non-Title IV-D recipients of services through the Registry are confidential, per 56 O.S. § 183 except as provided in OAC 340:25-5-67;

(D) sends custodial persons (CPs) a quarterly written notice of the amount of current support, arrears, and interest collected, and the amount of collections paid to the CP. CPs may also obtain this information over the Internet or by ~~telephoning~~phoning CSS, per OAC 340:25-1-2.1;

(E) reserves the right to refuse to accept a personal or business check or direct debit after receiving a dishonored personal or business check, direct debit, electronic funds transfer (EFT), or other negotiable instrument from the same payor or on the same case; and

(F) considers the date of collection to be the date payments are received by the Registry and applies payments to existing case balances as of that date. ~~If~~When a payment collected represents the current support amount for future months, the amount ~~should be~~is applied to such future months ~~as long as~~ when there are no past due balances on any of the noncustodial parent's (NCP's) cases, per 45 C.F.R. § 302.51.

(3) When CSS refuses to accept a personal or business check, direct debit, EFT, or other negotiable instrument from a payor per (2)(E) of this subsection, the payor:

(A) must submit the payment by cashier's check, certified check, money order, or cash at a CSS verified payment location as identified on the CSS page at http://www.okdhs.org;

(B) is added to the CSS Returned Payments List;

(C) remains on the Returned Payments List until CSS receives the equivalent of 12 months of payments unless:

(i) the payment is returned due to missing endorsement;

(ii) the payor provides prior notification that payment will be returned and remits a replacement payment within 10-calendar days of notification in the manner required by CSS;

(iii) the returned payment is insufficient funds caused by a CSS Financial Institution Data Match levy; or

(iv) CSS deems the reason for returned payment is out of payor's control; or

(D) must request removal from the Returned Payments List by contacting CSS, per OAC 340:25-1-2.1.

(4) CSS notifies the payor by mail:

(A) of the reason for the returned payment;

(B) that the payor was placed on the Returned Payments List;

(C) that the payor must submit payments as outlined in (3)(A) of this subsection; and

(D) how the payor can be removed from the Returned Payments List.

(5) When CSS removes the payor from the Returned Payments List and subsequently has another payment returned, the payor is added back to the Returned Payments List and remains there indefinitely.

(d) **EFT support payments.** NCPs, employers, and other payors may register to make electronic payments through the CSS online child support payment system ~~(WebPay) at https://www.okdhs-payes.com/Login.aspx~~(e-Pay), available through http://www.okdhs.org/services/ocss/pages/paymentoptions.aspx.

(1) To transfer child support payments electronically, NCPs, employers, and other payors must:

(A) call CSS at the ~~telephone~~phone numbers provided in OAC 340:25-1-2.1 to set up the EFT process;

(B) have a valid email account;

(C) have Internet access;

(D) be a legal owner of a:

(i) bank account held at a financial institution within the U.S.; or

(ii) VISA or MasterCard credit or debit card held at a financial institution within the U.S.; and

(E) register to use ~~WebPaye~~-Pay.

(2) ~~WebPay~~E-Pay payments do not replace federally mandated income withholding and will not stop or cancel income-withholding orders for NCPs.

(3) CSS may adjust and release payroll deductions that were electronically transferred from an NCP's wages. When an adjustment cannot be processed in time to effect the change on the next scheduled electronic funds transfer, employers do not refund money to the employee, make adjustments to subsequent EFT payments, or take other action to correct the amount deducted.

(4) CSS reserves the right to:

(A) close ~~a WebPay~~an e-Pay account and impose fees and charges when a scheduled payment transaction is returned for any reason;

(B) add the payor to Returned Payments List, per (c)(3) of this Section; and

(C) specify what payment formats are used to conduct the electronic funds transfer between businesses to state child support entities.

(e) **Payment issuance.**

(1) Per 42 U.S.C. § 654 and 45 C.F.R. § 302.38, CSS issues payments to the CP only by transferring funds electronically, also known as direct deposit, or through debit cards.

(2) In interstate cases, CSS issues payments to the initiating state Title IV-D agency by electronic funds transfer and only issues payments by paper warrant to initiating states that do not have an electronic funds transfer system.

(3) Payments issued by debit card.

(A) When a DHS customer has a debit card, at the point of CSS initial child support payment issuance for a CP, a letter is mailed explaining that child support funds are added to the existing debit card account.

(B) When a DHS customer was not issued an Oklahoma debit card at the point of CSS initial child support payment issuance, a letter is mailed explaining the debit card activation process and that the debit card should be expected within 10- business days. The CP must activate the debit card within 90-calendar days of issuance.

(i) When a card is not activated, CSS mails a second letter to the CP after 45- calendar days and a third letter after 90-calendar days. The letters explain the importance of activating the debit card and that when the card is not activated within 90-calendar days the payment is no longer available on the debit card.

(ii) Payments issued to a CP who has not activated the debit card are returned to CSS after 90-calendar days. When payments are returned to CSS, payments are applied, per OAC 340:25-5-350.4. When the payments were distributed to other case balances or returned to the NCP, the payments are not redistributed to the CP.

(4) Payments issued by direct deposit. After receiving a debit card, the CP may enroll in direct deposit by calling the toll-free customer service ~~telephone~~phone number located on the back of the debit card. There are no charges or fees for receiving child support payments by direct deposit. A CP must have a bank account held at a financial institution within the ~~United States~~U.S. to receive direct deposit child support payments and normal banking charges may apply.

(f) **Forged endorsement on warrants.**

(1) When a CP reports that a warrant has been fraudulently cashed, CSS compares the payee's signature against the endorsement on the warrant and verifies that the signatures do not match.

(2) CSS sends the following completed and signed documentation by the payee to the Oklahoma State Treasurer's Office (OST):

(A) Form 10AD044E, Affidavit of Lost or Destroyed Warrant;

(B) Form 10AD045E, Affidavit of Forged Endorsement; and

(C) Form 10AD046E, Investigation Questionnaire.

(3) CSS issues a replacement warrant to the payee after CSS receives the return of funds from OST and the OST mandatory 60-calendar-day holding period closes.

(g) **Overcollected support amounts.** CSS returns overcollected support amounts, per OAC 340:25-5-350.1.

(h) **Payment errors.** When payments ~~have been~~were disbursed, CSS manages payment errors as described in this subsection.

(1) ~~If~~When a payor makes a payment error, CSS is not required to correct, redirect, or recover the distributed payment, unless it ~~has been~~was retained by DHS.

(2) When CSS errs, CSS recovers overpayments to parties or CPs in Title IV-D and non-Title IV-D cases, per OAC 340:25-5, Part 37.

(i) **Suspicious payment activity.** CSS restricts use of payment methods by imposing limits, hold times, or other measures when CSS believes that suspicious activity ~~has~~ occurred or may occur on a payor's account.

340:25-5-351. Allocation and distribution of collections

(a) **Authority.** Oklahoma Department of Human Services Child Support Services (CSS) allocates and distributes support collections per Section 657 of Title 42 of the United States Code (42 U.S.C. § 657) and Sections 302.32, 302.51, and 302.52 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.32, 302.51, and 302.52). CSS collects fees per 42 U.S.C. § 654, 45 C.F.R. § 302.33, and Section 237 of Title 56 of the Oklahoma Statutes (56 O.S. § 237).

(b) **Fees.** CSS collects fees per 42 U.S.C. § 654, 45 C.F.R. § 302.33, and 56 O.S. § 237. A case is exempt from fees when the custodial person (CP) is currently receiving Temporary Assistance for Needy Families (TANF). Fees are withheld prior to child support distribution to the CP. CSS collects:

(1) an annual ~~$25~~ fee ~~once $500 in support is collected and issued to the CP~~on eligible cases per 45 C.F.R. § 302.33. When there is more than one Title IV-D child support program involved, CSS collects the annual fee on cases when Oklahoma is the initiating state; and

(2) a three percent service fee for each payment distributed to the CP, up to a $10.00 per month maximum.

(c) **Allocation.**

(1) **General allocation.** Allocation refers to how a payment is divided among eligible obligations. Some obligors have more than one child support case and the allocation rules determine which case receives all or a portion of the collection received. A collection is allocated based on the source of the collection and the type of legal action resulting in a collection.

(2) **Allocation models.** CSS divides collections among the obligor's eligible obligations based on the following models.

(A) **Standard.** All payments not made by income withholding order or federal income tax refund offset are allocated to eligible obligations in (i) through (iii):

(i) prorated to the current child support, cash medical support, and spousal support;

(ii) prorated to the monthly payment plan on past support; and

(iii) amounts remaining from the initial collection or additional collections received during the same month will allocate based on a prorated share of total arrears owed on all eligible obligations.

The allocated amounts cannot exceed the total arrears due on the cases.

(B) **Income Withholding Order (IWO).** Periodic payments from an IWO are allocated to eligible obligations in (i) through (iii):

(i) prorated to the current child support, cash medical support, and spousal support;

(ii) prorated to the monthly payment plan on past support and other judgment(s), such as judgments for attorney fees or genetic testing costs; and

(iii) the steps in (1) and (2) of this subsection are repeated for amounts remaining from the initial collection or additional collections received during the same month, until the entire collection is allocated.

(C) **Internal Revenue Service (IRS).** Collections received from the offset of federal income tax refunds are allocated according to the existing federal hierarchy per 42 U.S.C. § 657 and 45 C.F.R. § 302.32. CSS allocates only to balances certified to the IRS. CSS applies these collections to each eligible obligation: first to balances certified to the IRS as public assistance and then to any CP's certified balances.

(3) **Specific enforcement actions.** Collections received from case-specific enforcement actions are not allocated across all cases, but are allocated to the case(s) in which the action is taken.

(4) **Non-Title IV-D cases.** In non-Title IV-D cases, CSS allocates payments as follows:

(A) payments received from an IWO are allocated using the IWO model. Collections are allocated to non-Title IV-D cases based on the amounts listed in the non-Title IV-D IWO; and

(B) all other payments are allocated using the Standard model. When CSS receives information on processing a specific payment, CSS may allocate the payment based on that information.

(5) **Intergovernmental cases.**

(A) **Incoming.** In cases where CSS is collecting support for a CP who is receiving services from another jurisdiction's child support agency, past-due payments are allocated based on information provided by the initiating state.

(B) **Outgoing.** Collections received from other jurisdictions resulting from an outgoing referral are allocated to that case.

(d) **Distribution.**

(1) CSS distributes collections based on the federal distribution hierarchy per 42 U.S.C. § 657 and 45 C.F.R. §§ 302.32 and 302.51.

(2) CSS initially distributes collections to current support and current cash medical support obligations due each month. When collections are less than the amount of all current support and current cash medical support due, CSS distributes collections between the current child support and the current cash medical support obligations in proportionate shares.

(3) After the current child support and current cash medical support obligations are met, CSS distributes collections to current spousal support due.

(4) After current child support, current cash medical support, and current spousal support obligations are satisfied, remaining collections for the month are distributed to past-due balances.

(5) CSS distributes payments to interest owed after current child support and principal arrears balances are paid in full to each obligation.

(6) When a payment collected represents current support for future months, the amount is applied to such. When past support balances exist on any of the noncustodial parent's cases, payments are not applied to the next month's current support per 45 C.F.R. § 302.51.

[OAR Docket #19-629; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

[OAR Docket #19-630]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
340:50-1-1 [AMENDED]
Subchapter 3. Application Process
340:50-3-1 through 340:50-3-2 [AMENDED]
Subchapter 5. Non-Financial Eligibility Criteria
Part 1. Household Definition
340:50-5-10.1 [AMENDED]
Part 3. Special Households
340:50-5-28 [AMENDED]
Part 9. Work Registration
340:50-5-94 [AMENDED]
Part 11. Oklahoma Supplemental Nutrition Assistance Program ~~Employment and Training Program~~Works (OK SNAP WORKS)
340:50-5-106 [AMENDED]
Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-22 [AMENDED]
340:50-7-29 through 340:50-7-31 [AMENDED]
Part 5. Determination of Income
340:50-7-46 [AMENDED]
Subchapter 9. Eligibility and Benefit Determination Procedures
340:50-9-1 [AMENDED]
340:50-9-5 [AMENDED]
Subchapter 10. Electronic Benefit Transfer (EBT)
340:50-10-1 [AMENDED]
340:50-10-3 [AMENDED]
340:50-10-5 [AMENDED]
340:50-10-9 [AMENDED]
Subchapter 11. Special Procedures
Part 1. Households Entitled to Expedited Service
340:50-11-5 [AMENDED]
Part 3. Simplified Supplemental Nutrition Assistance Program (SSNAP) for Temporary Assistance for Needy Families (TANF) and Companion State Supplemental Payment (SSP) Recipient(s)
340:50-11-20 [AMENDED]
Part 5. Restoration of Lost Benefits
340:50-11-46 [AMENDED]
Part 9. Disaster Procedures and Reporting Requirements
340:50-11-86 [AMENDED]

Subchapter 13. Fair Hearings and Quality Control
340:50-13-2 [AMENDED]
(Reference WF 19-50)

AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162); and Sections 271.4, 272.13, 272.14, 273.1, 273.2, 273.7, 273.9, 273.11, 273.12, 273.15, and 273.17 of the Code of Federal Regulations.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019

COMMENT PERIOD:
January 15, 2019 through February 14, 2019

PUBLIC HEARING:
February 26, 2019

ADOPTION:
February 27, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 16, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The proposed amendments to Chapter 50, Subchapter 1 amend the rules to: (1) add Oklahoma Department of Human Services (DHS) responsibilities for administration of SNAP; and (2) update terminology and add a legal citation.

The proposed amendments to Chapter 50, Subchapter 3 amend the rules to: (1) clarify and update procedures used to assist applicants in filing a food benefit application on the date they request food benefits; (2) reorganize and add clarifying language regarding authorized representatives to better define who can be an authorized representative for a food benefit household, what actions he or she can perform for the household, and what restrictions may apply; (3) clarify application procedures when a household provides verification within 30-calendar days of a denial; (4) clarify that a postponed interview must be completed and postponed verification provided by the last day of the expedited certification period to avoid a break in service; (5) clarify when the household must complete a new application following a one- or two-month expedited certification; (6) add policy and legal citations; and (7) update terminology.

The proposed amendments to Chapter 50, Subchapter 5 amend the rules to: (1) remove information regarding how to handle income and expenses of excluded household members; (2) add failing to cooperate regarding unclear information to the reasons a person may be considered an ineligible household member; (3) remove an incorrect reason to end a voluntary quit disqualification; (4) change the title of the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program to OK SNAP Works; (5) add two new components to OK SNAP Works; (6) correct a policy citation; and (7) add a policy citation.

The proposed amendments to Chapter 50, Subchapter 7 amend the rules to: (1) exclude military combat pay from income consideration; (2) update legal citations for Title III and Title V funds excluded under the Older Americans Act and the organizations that receive the funds; (3) add salary income received by a shareholder from an S corporation as earned income; (4) clarify that income received by a third party is considered as income to the person to whom it is legally owed; (5) add profit sharing as unearned income; (6) add failing to cooperate regarding unclear information to the reasons a person may be considered an ineligible household member for income consideration; (7) update profit sharing under self-employment income to indicate how to consider profit sharing for shareholders in S corporations and partners in partnerships; (8) clarify how to consider farm income when there is a profit; (9) clarify that activity fees and transportation costs may be included as part of a dependent care deduction; (10) correct when to consider cents as countable State Supplemental Income (SSI); and (11) add legal and policy citations.

The proposed amendments to Chapter 50, Subchapter 9 amend the rules to: (1) add a three- or four-month certification period for households that include an able-bodied adult without dependents (ABAWD) who is not exempt or meeting the work requirement; (2) change reporting timeframes for annual, semi-annual, and change reporting households; (3) add failing to meet work registration requirements as a reason benefits may be changed between reporting periods for semi-annual reporters; (4) change the unearned income reporting requirement and add a requirement to report when an ABAWD's work hours fall below 20 hours per week for change reporting households; (5) define what is considered unclear information, add new household and Adult and Family Services (AFS) staff responsibilities for clarifying the household's circumstances, and add required actions AFS staff must take regarding the unclear information; (6) require AFS staff reopen or restore food benefits to the previous level pending a fair hearing requested within the 10-calendar day time frame unless the household waives continuation of benefits; and (7) add legal citations.

The proposed amendments to Chapter 50, Subchapter 10 amend the rules to: (1) add the name of the SNAP electronic benefit transfer (EBT) card; (2) clarify how SNAP recipients receive and use food benefits; (3) clarify authorized representative information; (4) add information about how clients and authorized representatives obtain EBT cards; (5) add information regarding what is considered an initial EBT card; (6) change: (a) how to request an EBT replacement card; (b) EBT card replacement procedures from the county office to the EBT contractor or the Oklahoma Department of Human Services (DHS) Finance and Administration Electronic Payment Services Unit; and (c) the length of time it takes to deliver an EBT replacement card; (7) update terminology; and (8) add a policy citation.

The proposed amendments to Chapter 50, Subchapter 11 amend the rules to: (1) remove unnecessary language regarding work registration; (2) change the form used to schedule a postponed interview; (3) clarify that a postponed interview must be completed and postponed verification provided by the last day of the expedited certification period to avoid a break in service; (4) clarify when the household must complete a new application following a one- or two-month expedited certification and when normal processing standards must be used; (5) add information that Simplified Supplemental Nutrition Assistance Program (SSNAP) procedures do not apply when any household member is considered an ineligible household member; (6) remove duplicative information; (7) reorganize, simplify, and clarify information regarding restoration of lost benefits procedures; (8) remove outdated information regarding the use of a handbook and the issuance amount of emergency food benefit allotments; (9) add policy and legal citations; and (10) update terminology.

The proposed amendments to Chapter 50, Subchapter 13 amend the rules to: (1) update DHS staff procedures when a client requests a fair hearing; (2) add hearing procedure for when the client plans to move to another state; (3) require AFS staff to reopen or restore food benefits to the previous level pending a fair hearing when requested within the 10-calendar day time frame unless the household waives continuation of benefits; (4) add reasons benefits may be reduced or closed prior to a hearing decision being made; (5) clarify and simplify language; (6) update terminology; and (7) add legal citations.

CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

340:50-1-1. Purpose

(a) The purpose of this Chapter is to describe the operation of the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) Supplemental Nutrition Assistance Program (SNAP). The purpose of SNAP is to utilize, as efficiently as possible, the nation's food abundance to raise the nutritional

levels and improve the general health of the nation's low-income households. Per Section 271.4 of Title 7 of the Code of Federal Regulations, DHS is responsible for:

(1) certifying eligible applicant households for SNAP food benefits;

(2) the issuance, control, and accountability of SNAP food benefits;

(3) developing and maintaining complaint procedures;

(4) developing, conducting, and evaluating training;

(5) conducting performance reporting reviews;

(6) keeping records necessary to determine that DHS is complying with federal regulations in its operation of SNAP; and

(7) submitting accurate and timely financial and program reports.

(b) ~~OKDHS~~DHS has total and direct responsibility for initiating and monitoring program informational activities for SNAP in Oklahoma.

(1) SNAP informational activities consist of comprehensive and ongoing activities to convey information about the program, including household rights and responsibilities, to applicant and recipient households through such means as publications, media, posters, and face-to-face contacts.

(2) Nutrition education information is available to instruct and emphasize basic nutritional concepts and consumer practices for SNAP applicants and recipients.

(c) Nutrition education and program informational ~~materials~~pamphlets and posters are available to ~~the~~order by local ~~human services center (HSC) through regular pamphlet distribution procedures~~county offices. ~~HSC~~County staff are responsible for informing applicants and recipients of the availability of these materials at the time of initial application and ~~recertification~~certification renewal.

SUBCHAPTER 3. APPLICATION PROCESS

340:50-3-1. The application process

(a) **General.** The application process for the Supplemental Nutrition Assistance Program (SNAP) begins with a request for benefits and ends with determining the household's eligibility and entering that determination into the computer system.

(1) The application must be processed no later than 30-calendar days after the signed application is submitted to the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS).

(2) Expedited services must be available to households in immediate need, per Oklahoma Administrative Code (OAC) 340:50-11-1 through 340:50-11-6.

(3) Persons having lawful alien status must have their status verified through Systematic Alien Verification for Entitlements (SAVE), per OAC 340:65-3-4.

(4) Benefits must be provided retroactively to the date of application for households who timely completed the application process and are determined eligible.

(b) **Filing applications.** Each household wishing to participate in SNAP must file a separate application. Refer to OAC 340:50-5-1 for household definition. The designated head of household is not required to make the food benefit application. Applications may be made by a responsible household member or authorized representative. A responsible household member or authorized representative completes an authorization for release of information at the time of application, when necessary. Applications may be filed in person, ~~electronically~~online, or by mail.

(1) **Right to same day filing.** Because the time limit for providing benefits ~~is calculated from~~starts on the date DHS receives the application ~~is actually received~~ in the county office or ~~submitted~~ online, ~~households are advised~~the worker informs the household at first contact of ~~their~~its right to ~~complete and file~~submit an application on the ~~same day they~~ contact ~~OKDHS~~date and encourages the household to do so. ~~They are also advised they do~~The worker also advises the household it does not have to be interviewed before filing the application and ~~they~~that the household may file an incomplete application.~~as long as the~~At a minimum, an incomplete application ~~contains~~must contain the applicant's name, address, and signature of ~~either~~ an adult household member ~~of the household~~ or the household's authorized representative. ~~Food benefit households are encouraged to file the application on the same day they or their authorized representative contact OKDHS.~~

(A) Form 08MP001E, Request for Benefits, is made readily accessible to potentially eligible households, groups, and organizations that assist persons in completing applications for food benefits.

(B) ~~If~~When the household ~~contacts OKDHS~~requests food benefits:

(i) by ~~telephone but is unable to file~~phone, the worker first offers to submit an online application ~~online~~on behalf of the household (by proxy). When the household does not have time to submit the application by proxy, the worker informs the household it may submit an application online at www.okdhslive.org or ~~at the county office on~~ the worker could email or mail Form 08MP001E to the household the same day~~,~~; or

(ii) ~~the household has requested food benefits~~ in writing and provides a phone number, ~~county office staff~~the worker attempts to call the household to proxy the application. When the household did not provide a phone number or the worker is unable to reach the household, he or she mails Form 08MP001E~~, Request for Benefits,~~ to the household on the same day the written request ~~or telephone call~~ is received.

(C) To facilitate SNAP participation ~~in SNAP,~~for households in which all members are applying for a State Supplemental Payment (SSP) or Temporary Assistance for Needy Families (TANF), these households must be allowed to apply for food benefits at the same time they apply for financial assistance. However, the household's eligibility and benefit level are based on food benefit eligibility criteria and the

household is certified per SNAP policy. ~~Policy for taking and processing food benefit applications for SSP and TANF households are provided in~~Refer to OAC 340:50-11-20 through 340:50-11-27 for processing food benefit applications for households approved for SSP and/or TANF.

(D) Immediately upon receipt in ~~an OKDHS~~a DHS office, all applications are screened to determine ~~whether~~if the household is entitled to expedited services. All initial applicant households that qualify,~~under the provisions in~~ per OAC 340:50-11-1 through 340:50-11-6 must receive expedited processing ~~if~~when certified for food benefits whether requested by the household or not. When the household appears eligible for expedited services and meets the criteria,~~at~~ per OAC 340:50-3-2(c), the worker postpones the interview requirement and approves the household for initial benefits.

(2) **Head of household.** A household may select, as head of household, an adult parent of children of any age living in the food benefit household, or an adult who has parental control over children 17 years of age and younger living in the food benefit household, provided all adult household members agree to the selection.

(A) Households select their head of household at each certification action or when there is a change in household composition.

(B) ~~If~~When all adult members do not agree to the selection or decline to select an adult head of household, the household may select another head of household or the worker may designate a head of household.

(C) In no event does the failure to select an adult who has parental control of children delay the certification or result in the denial of benefits for an otherwise eligible household.

(3) **Authorized representative.** ~~An~~Per Section 273.2(n) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.2(n)(1)), an authorized representative is ~~a~~an adult non-household member who can act on behalf of the SNAP household. The authorized representative may complete the application process, report changes, obtain benefits, and/or purchase food for the household.

(A) The authorized representative designation must be made in writing and be signed by the head of household, spouse, or other responsible household member. The written designation must clearly state what actions the household wants the authorized representative to perform for it. The worker only allows the authorized representative access to the household's food benefits, when the written statement clearly grants such access. Per 7 C.F.R. § 273(n)(3), a household may allow any SNAP household member or non-household member, when authorized, to purchase food or meals for the SNAP household with the electronic benefits transfer (EBT) card.

(B) A non-household member may be designated as an authorized representative for the application process provided the person is an adult who is knowledgeable of the relevant household circumstances ~~and who is designated in writing by the head of the household, spouse, or other responsible household member to act on behalf of the household in applying for and obtaining food benefits for use by those included in the SNAP benefit household~~. In the event the only adult member of the household is classified as a non-household member,~~that person~~ per OAC 340:50-5-5, he or she may be designated as the authorized representative for minor household members.

(~~A~~C) When a household member designates an authorized representative ~~has been designated~~ in writing to ~~make application~~apply for SNAP benefits on the household's behalf~~of a household~~, the worker informs the household ~~is informed they~~it will be held liable for any over-issuance that results from erroneous information given by the authorized representative. When possible, the head of the household or spouse prepares or reviews the application, even though the authorized representative actually files the application and is interviewed.

~~(B) OKDHS employees and their relatives who are authorized to accept food benefits may not act as authorized representatives without the specific written approval of the local county director after a determination has been made that no one else is available to serve as the authorized representative.~~

~~(C) A disqualified person may not act as an authorized representative during the period of disqualification unless the person disqualified is the only adult member of the household able to act on its behalf and the worker determines there is no one else available to serve as an authorized representative.~~

(4) ~~**Documentation and control of**~~**Restrictions on authorized representatives.** The worker ensures an authorized representative is properly designated and has not been disqualified for an intentional program violation, per OAC 340:50-5-10.1 and 340:50-15-25 or is not restricted from serving as an authorized representative, per 7 C.F.R. § 273.2(n)(4) and information included in (A) through (E) of this subsection.

(A) Limits are not placed on the number of households an authorized representative may represent. ~~Care is taken by the~~The worker takes care to ensure the household:

(~~A~~i) ~~has~~freely requested the assistance of the authorized representative;

(~~B~~ii) circumstances are correctly reported; and

(~~C~~iii) ~~is receiving~~receives the correct amount of benefits.

(B) DHS employees involved in certification or issuance processes and retailers authorized to accept food benefits may not act as authorized representatives without the specific written approval of the local county director and only after the county director determines no one else is available to serve as the authorized representative.

(C) A person disqualified for an intentional program violation may not act as an authorized representative during the disqualification period unless the person disqualified is the only adult member of the household able to act on its behalf and the worker determines there is no one else available to serve as an authorized representative. The worker must separately determine if the person is needed to apply for or to obtain benefit on behalf of the household.

(~~5~~D) ~~**Disqualification of authorized representative.**~~ An authorized representative is disqualified from serving as an authorized representative in SNAP for up to one year when evidence demonstrates the person ~~has~~ misrepresented a household's circumstances, ~~has~~ knowingly provided false information pertaining to the household, or ~~has~~ made improper use of benefits. Information indicating that a person should be disqualified as an authorized representative is forwarded to ~~the~~ Adult and Family Services (AFS) SNAP ~~Section~~, for a decision. The ~~county office~~worker is notified in writing of the decision. ~~If~~When the person is disqualified, appropriate notification is mailed to the household by AFS SNAP ~~Section~~ staff. This provision does not apply to persons serving as authorized representatives for group homes or drug ~~addiction~~ and alcoholic treatment ~~programs~~centers. However, authorized representatives for group homes or drug and alcohol treatment centers who intentionally misrepresent household circumstances may be prosecuted under applicable federal and state statutes for their acts.

(E) Homeless meal providers are known as authorized or private non-profit establishments, such as soup kitchens, temporary shelters, or contracted restaurants. These establishments may not act as authorized representatives for homeless food benefit recipients.

(c) **Processing initial applications.** The application date for online submissions is the date the household submits the application ~~via~~to the ~~okdhslive~~OKDHSLive website ~~as shown on the OKDHSLive report form~~at www.okdhslive.org. When the county office receives an application that contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative, the household's application date is the date it is received and stamped into the county office except as stipulated, per OAC 340:50-9-1(c) and 340:50-9-6(e). When the application is signed by the responsible person or authorized representative for a household ~~who is~~ also applying for SSP or TANF, the application is processed, per OAC 340:50-11.

(1) **Normal processing standard for initial applications.** The worker must provide eligible households who complete the initial application process with food benefits within 30-calendar days following the date the initial application ~~was~~is filed.

(2) **Withdrawing application.** A household may voluntarily withdraw its application at any time prior to the determination of eligibility.

(d) **Second 30-calendar days.** A new application is not needed when a household ~~fails to complete~~completes the application ~~process~~ interview within 30-calendar days,~~if they provide~~ is denied for failing to provide verification, and then provides the required verification within 60-calendar days. ~~This includes verification waived for expedited services.~~ When the household waits until the second 30-calendar day period to provide the verification, there is a break in ~~the certification,~~benefits and the worker changes the application and certification dates to the date the verification is provided. Refer to OAC 340:50-11-5 when the interview or verification is postponed for an expedited certification.

340:50-3-2. Interview process

(a) **Interview requirement.** All households initially applying for food benefits or completing a certification renewal, including those submitting applications electronically or by mail, must have a face-to-face or phone interview with a worker prior to certification unless the household meets criterion in (a)(2) or (b) of this Section per Section 273.2(e) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.2(e)). Staff may conduct 100 percent of all Supplemental Nutrition Assistance Program (SNAP) initial and certification renewal application interviews by phone.

(1) A face-to-face interview must be conducted when the household or its authorized representative requests a face-to-face interview.

(2) Certification renewal interviews may be waived for households when all adult members are elderly or disabled and have no earned income.

(b) **Postponed interviews.** Households applying for food benefits that complete and sign an online application or hand-deliver, mail, or fax a complete and signed Form 08MP001E, Request for Benefits, to the county office and who appear eligible for expedited services per Oklahoma Administrative Code (OAC) 340:50-11-1 may have the interview postponed in certain circumstances. ~~The seven-calendar day expedited service or 30-calendar day processing standards apply.~~

(1) ~~The~~Per 7 C.F.R. § 273.2(i), the interview may be postponed when the:

(A) applicant's identity is verified; and

(B) worker is unable to contact the household or determines that an interview cannot be scheduled within seven-calendar days.

(2) When the interview is postponed, the worker schedules the interview ~~in advance~~ by sending the household Form 08AD091E, Interview Notice, or Form 08AD093E, Support Center Interview Notice, setting an interview date and time~~, and listing the type of verification the household may need to provide before further benefits are approved~~. The worker schedules the interview to occur as quickly as possible to ensure the interview can be completed by the last day of the expedited certification period. When the interview is not completed by the end of the expedited certification period, the household must reapply for food benefits.

(~~A~~3) When, after the interview, the household needs to provide verification, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, requesting the verification. When the household informs the worker it is unable to furnish the required verification, the worker offers to help the applicant obtain the verification.

(~~i~~A) The worker's assistance may range from explaining how or where to obtain proof to the worker obtaining proof when the applicant is unable to do so.

(~~ii~~B) The worker is not required to obtain proof for an applicant who is unwilling to do so.

(~~B~~4) ~~Per OAC 340:50-3-1 and 340:50-11-5, the interview must be completed and postponed~~When the household provides postponed verification within 60-calendar days of the application date, the household is not required to file a new application.

(A) Postponed verification ~~provided within 30-calendar days of the application date~~must be provided by the last day of the expedited certification period in order to avoid a break in benefits.

(~~C~~B) ~~When the household completes the interview within 30-calendar days and provides postponed verification within 60-calendar days of the date of application, the household is not required to file a new application. Benefits~~When the household does not provide the verification by the last day of the expedited certification period, but does provide it within 60-calendar days of the application date, benefits are prorated from the date the ~~interview is completed and~~postponed verification is provided.

(c) **Who must be interviewed.** The person interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative who knows the household's circumstances. When the household chooses to be interviewed face-to-face, the person interviewed may bring any person to the interview.

(d) **Worker responsibilities during the interview.** During the interview, the worker:

(1) reviews with the household the information on the application and resolves unclear and incomplete information;

(2) inquires if changes occurred in the household's income, deductions, or other circumstances since the application was filed;

(3) informs the household of its rights and responsibilities, including reporting requirements, responsibility to cooperate with SNAP Quality Control (QC) when asked to do so, and an explanation of the civil rights complaint process, per OAC 340:50-1-5;

(4) conducts the interview as an official and confidential discussion of household circumstances limited to facts related to food benefit eligibility factors;

(5) gives Form 08MP006E, Information for Benefit Renewal, to the household and explains benefit renewal procedures;

(6) ensures the household's right to privacy is protected; and

(7) provides a paper or electronic copy of the completed application in the format requested by the household, when requested.

(e) **Scheduling interviews.** The worker schedules the interview as soon as possible to ensure the household, when eligible, may participate within 30-calendar days following the application date.

(1) The worker uses Form 08AD091E or Form 08AD093E~~, Support Center Interview Notice,~~ to schedule the interview.

(2) When the person to be interviewed is employed, the worker schedules an appointment to minimize the person's absence from work even when it must be scheduled outside of normal business hours.

(3) When the household submits a timely certification renewal, the worker schedules the interview as early as possible, but not later than the last day of the month.

(A) When the household fails to appear for the interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(4) When the household submits an untimely certification renewal, the worker schedules an interview as early as possible, but not later than 20-calendar days from the application date.

(A) When the household fails to appear for the scheduled interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(f) **Household cooperation with eligibility determination.** To determine eligibility, the household or authorized representative must complete and sign the application or certification renewal, be interviewed, and provide required information. When the household does not cooperate with the worker in determining:

(1) initial eligibility, the worker denies the application; or

(2) continuing eligibility at mid-certification renewal or certification renewal, the worker closes food benefits.

(g) **Household cooperation with a QC review.** When the household is selected for a QC review, the household must cooperate with the QC reviewer per 7 C.F.R. § 273.2(d)(2). When the household refuses to cooperate, the SNAP QC administrator informs SNAP program field representative staff of the non-cooperation and SNAP program field representative staff closes the food benefit for refusal to cooperate.

(1) For a determination of refusal to be made, the household must be able to cooperate and clearly demonstrate that it will not take the necessary actions required to complete the QC review process.

(2) The household may reapply following food benefit closure, but may not be determined eligible until it cooperates with the QC review unless (3) of this subsection applies.

(3) When food benefits were closed for refusing to cooperate with the QC reviewer and the household waits to reapply until after 125-calendar days from the end of the QC review period, October 1 through September 30, the household must provide verification of eligibility factors for the new application only. For example, when the household had a QC review during the October 2014 through September 2015, annual QC review period and food benefits were closed for refusal to cooperate with the QC review, the household is required to only provide verification for the new application when it is filed after February 2, 2016.

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 1. HOUSEHOLD DEFINITION

340:50-5-10.1. Excluded household members

(a) **Excluded household members.** Excluded household members may not participate as a separate food benefit household. When excluded members live with the food benefit household, they are excluded from the household's size when determining benefits and comparing the household's monthly income with the income eligibility standards. Depending on the reason they are excluded, all or a portion of their income is included as countable income for the food benefit household and deductible expenses may be prorated, per Section 273.11(c) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.11(c)). ~~Per~~Refer to Oklahoma Administrative Code (OAC) 340:50-7-29(d), to determine how the income and expenses of excluded household members ~~whose income~~ is counted~~:~~

~~(1) included in its entirety are termed disqualified members and the worker does not prorate deductible expenses; and~~

~~(2) prorated are termed ineligible household members and all deductible expenses are prorated with the exception of utility expenses~~.

(b) **Disqualified household members.** A household member may be disqualified for Supplemental Nutrition Assistance Program (SNAP) food benefits, per 7 C.F.R. § 273.1(b)(7) for:

(1) committing an intentional program violation or fraud, per OAC ~~340:50-15-4 or~~ 340:50-15-25;

(2) failing to meet work registration requirements, per OAC 340:50-5-85 through OAC 340:50-5-89;

(3) being a fleeing felon. Per 7 C.F.R. § 273.11(n)(1), for a person to be considered a fleeing felon, the worker must verify:

(A) there is an outstanding arrest warrant for the person issued for his or her arrest by a federal, state, or local law enforcement agency~~,~~ or court~~,~~ and, the underlying cause for the warrant is for committing or attempting to commit a crime that is a felony under the law of the place from which the person is fleeing, or a high misdemeanor under the law of New Jersey;

(B) the person is aware of, or should have reasonably expected that a felony warrant was, or would have been, issued;

(C) the person ~~has taken~~took some action with intent to avoid being arrested or jailed; and

(D) a federal, state, or local law enforcement agency is actively seeking the person. "Actively seeking" is when a federal, state, or local law enforcement agency:

(i) informs the Oklahoma Department of Human Services (DHS) that it intends to enforce an outstanding felony warrant, as described in (b)(3)(A) of this Section, within 20-calendar days of submitting a request for information about the person to DHS;

(ii) presents ~~to DHS~~ a felony arrest warrant to DHS that conforms to one of the National Crime Information Center uniform offense classification codes ~~per (I) through (III) of this subparagraph~~, to obtain information on the location of and other information about the person named in the warrant~~;~~. National Crime Information Center uniform offense classification codes are:

(I) escape, code 4901;

(II) flight to avoid prosecution, confinement, and such, code 4902; or

(III) flight-escape, code 4999; or

(iii) states ~~that~~ it intends to enforce an outstanding felony warrant within 30-calendar days of the date of the request from DHS about a specific outstanding felony warrant; or

(4) being a probation or parole violator meeting criteria of this paragraph. Per 7 C.F.R. § 273.11(n)(2), to be considered a probation or parole violator, the Adult and Family Services ~~Director's~~director's designee must determine that:

(A) the person violated a condition of his or her probation or parole imposed under federal or state law; and

(B) federal, state, or local law enforcement authorities are actively seeking the person to enforce the conditions of the person's probation or parole. "Actively seeking" is when a federal, state, or local law enforcement agency:

(i) informs DHS that it intends to arrest a person for a probation or parole violation within 20-calendar days of submitting an information request about the person to DHS; or

(ii) states that it intends to arrest the person for a probation or parole violation within 30-calendar days of the request date from DHS about a specific outstanding felony warrant or parole violation.

(c) **Ineligible household members.** Ineligible household members are ~~members~~persons living in the household that do not meet a program requirement, such as:

(1) failure to obtain, or refusal to provide a Social Security number, per OAC 340:50-5-68;

(2) not being a citizen or qualified alien, per OAC 340:50-5-67; ~~or~~

(3) being an able-bodied adult without dependents and not meeting work requirements, per OAC 340:50-5-100; or

(4) failure to cooperate with providing requested verification when information is unclear, per OAC 340:50-9-5(i)(4).

PART 3. SPECIAL HOUSEHOLDS

340:50-5-28. Shelter for victims of domestic violence and their children

Residents of shelters for victims of domestic violence and their children may apply and be certified for food benefits on their own behalf using program requirements applicable to any other household, per Section 271.2 and 273.11(g) of Title 7 of the Code of Federal Regulations~~(C.F.R.)~~. ~~They~~Shelter residents may name a shelter staff member or other person to act as an authorized representative for application and certification purposes; however, the residents are expected to control ~~the use of~~ their own food benefits.

(1) **Verification for shelter status.** Oklahoma Department of Human Services (DHS) staff are responsible for verifying the ~~shelter for victims of domestic violence and their children meets~~shelters meet the definition ~~specified in~~for domestic violence shelters, per Oklahoma Administrative Code (OAC) ~~340:50-5-7(b)(2)(E)~~340:50-5-7.1(4).

(A) ~~Verification of non-profit~~Non-profit status verification is accomplished by seeing ~~correspondence from the~~ Internal Revenue Service (IRS) correspondence, stipulating the organization is tax-exempt as a charitable or educational entity, per Section 501(c)(3) of the IRS code.

(B) When IRS documentation is not available, the worker sends a copy of the shelter's by-laws to Adult and Family Services Supplemental Nutrition Assistance Program (SNAP) to determine non-profit status.

(C) SNAP staff notifies the worker of the ~~determination of~~ non-profit status determination.

(D) The county director is responsible for keeping a list and, the supporting documentation, of domestic violence shelters in the county whose status is verified~~and the supporting documentation~~.

(2) **Separate households.** A shelter resident included in another active household may participate as a separate household when the active household includes the person who abused the resident. The resident may receive an additional allotment as a separate household once a month. The worker takes prompt action to remove shelter residents from the active household's composition and allotment.

(3) **Income and expenses.** The worker certifies a resident applying as a separate household based on the resident's current income and expenses. When the shelter charges a room payment, it is considered a shelter expense for the resident. The worker excludes the income and expenses of the resident's former household. The worker expedites processing the application when the resident meets expedited services criteria, per OAC 340:50-11-1.

PART 9. WORK REGISTRATION

340:50-5-94. Penalty for voluntary quit

When an adult household member quits a job of at least 30 hours a week or the equivalent of the federal minimum wage multiplied by 30 hours or reduces his or her work effort, per Oklahoma Administrative Code (OAC) 340:50-5-89 without good cause, the actions described in this Section are taken, per Section 273.7(j) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.7(j)).

(1) **Applicant household.** When a household member of an applicant household is subject to the voluntary quit provision, the worker does not include the person in the food benefits. The person is disqualified from food benefits for a period of 90-calendar days effective from the date the remaining household members are approved for food benefits, per 7 C.F.R. § 273(j)(3)(vi). When the person subject to voluntary quit is the only member of the applicant household, the worker denies the food benefit application. The person's disqualification period starts effective the date the denial notice issues.

(2) **Participating household.** When the worker determines that a member of a participating household voluntarily quit a job or reduced his or her work effort without good cause after certification, the worker removes the household member from the food benefit or closes a one-person household's food benefits effective the first day of the month following the next advance-notice effective date, per Appendix B-2, Deadlines for Case Actions, and issues a 10-calendar day advance-notice. The disqualification period runs continuously for three months beginning with the month the adverse action is effective unless the household requests a fair hearing, per (4) of this Section or eligibility is reestablished, per (5) of this Section.

(3) **Households with special circumstances.**

(A) **Voluntary quit or reduction in work effort occurs or is discovered in the last month of certification.** When a voluntary quit or reduction in work effort occurs or is discovered in the last month of a certification period, the household reapplies for food benefits, and the person subject to a voluntary quit penalty is:

(i) a one-person household, the worker denies the certification renewal. The person is disqualified for three months beginning the day after the last certification period ends or until eligibility is reestablished, per (5) of this Section; or

(ii) a member of the household containing other household members, the worker disqualifies the person subject to voluntary quit for three months or until eligibility is reestablished, per (5) of this Section.

(B) **Disqualified person changes households.** Persons disqualified for quitting a job or reducing their work effort carry their disqualification with them when they join a new household.

(C) **Application filed in third month of disqualification period.** When a one-person household files an application in the third-calendar month of the 90-calendar day or three-month disqualification period and all eligibility criteria are met, the worker denies food benefits for the application month and certifies the household beginning the first day after the disqualification period ends. When a household containing more than one household member files a certification renewal and the new certification period is effective the first day of the last month of the disqualified person's disqualification period, the worker does not include the disqualified person until the disqualification period ends.

(4) **Fair hearings.** Each household has a right to request a fair hearing to appeal a benefit denial, closure, or reduction in food benefits due to a voluntary quit determination. When the participating household's benefits are continued pending a fair hearing and the hearing decision upholds the voluntary quit determination, the disqualification period begins the first month after the hearing decision is rendered.

(5) **Ending a voluntary quit disqualification.** Eligibility may be reestablished during a disqualification period and the household member, when otherwise eligible, may resume participation~~,~~ when the member, who caused the disqualification~~:~~

~~(A) secures new employment of at least 30 hours per week or has weekly earnings equivalent to the federal minimum wage multiplied by 30 hours; or~~

~~(B)~~ becomes exempt from the work registration requirements, per OAC 340:50-5-86.

PART 11. OKLAHOMA SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM ~~EMPLOYMENT AND TRAINING PROGRAM~~WORKS (OK SNAP WORKS)

340:50-5-106. Oklahoma Supplemental Nutrition Assistance Program ~~(SNAP) Employment and Training (E&T) Program~~Works (OK SNAP WORKS)

The Oklahoma Department of Human Services (DHS) operates a voluntary SNAP ~~E&T Program~~ employment and training program, OK SNAP Works, through a contracted service provider for adults receiving SNAP food benefits, per Section 273.7(e)(4) of Title 7 of the Code of Federal Regulations. ~~The~~OK SNAP ~~E&T Program intent is~~Works intends to help food benefit recipients, especially able-bodied adults without dependents (ABAWD), become involved in meaningful, work-related activities that lead to paid employment and enable them to achieve or maintain economic self-support.

(1) **Worker responsibilities.** It is the worker's responsibility to:

(A) inform the applicant or recipient that:

(i) participation in ~~the~~OK SNAP ~~E&T Program~~Works is voluntary; and

(ii) any non-exempt, ABAWD in the household who is not complying with ABAWD work requirements, per Oklahoma Administrative Code (OAC) 340:50-5-100 is automatically referred to ~~the~~OK SNAP ~~E&T Program~~Works;

(B) ask if any exempt adult household member wants to voluntarily participate in ~~the~~OK SNAP ~~E&T Program~~Works;

(C) give the applicant or recipient contact information for the contracted service provider to schedule an intake appointment, when an adult household member wants to participate in OK SNAP ~~E&T~~Works; and

(D) send a referral to the contracted service provider for:

(i) non-exempt ABAWDs who are not complying with ABAWD work requirements, per OAC 340:50-5-100; and

(ii) non-ABAWDs who express an interest in participating in ~~the~~OK SNAP ~~E&T program~~Works.

(2) **Referral and assessment.** The worker sends a referral to the contracted service provider to initiate the intake process.

(A) After receiving a referral from the worker, contracted service provider staff schedules referred work registrants for an orientation and comprehensive assessment.

(B) Following orientation and assessment, each participant has an assessment interview with contracted staff to explore the participant's employment and training needs and barriers, communication and employment-related skills, education and employment history, and career interests.

(C) Participants are then enrolled in a ~~work readiness workshop and have access to resource center activities~~component that addresses their employment barriers.

(3) **OK SNAP ~~E&T~~Works component assignments.** Once OK SNAP ~~E&T~~Works participants complete the intake process~~and work readiness workshop~~, they are enrolled in ~~an E&T~~a component. OK SNAP ~~E&T Program~~Works components include job search, job search training, educational services, vocational training, Workfare for non-exempt ABAWDs only, work experience, and job retention services.

(A) **Job search component.** Job search is a component that provides structured activities to help participants seek and obtain suitable employment.

(B) **Job search training component.** Job search training is a component that enhances the job readiness of participants by teaching them job seeking techniques, increasing job search motivation, and boosting self-confidence.

(~~B~~C) **Educational services component.** Participants are placed in an educational services component when they do not have a high school diploma or equivalency certificate, have literacy issues, or need to learn or improve English language skills.

(~~C~~D) **Vocational ~~services~~training component.** Participants may receive vocational training when assessments indicate training is needed to enhance employability or industry-specific training is needed as part of a job placement program.

(~~D~~E) **Workfare component.** Workfare is a work component only available to non-exempt ABAWDs. ~~A participant is~~Participants are assigned to work in a public service or a private, non-profit agency to obtain skills necessary to enhance employability or develop skills required for job placement.

(F) **Work experience.** The work experience component is designed to improve the employability of participants through actual work experience and/or training. The goal of work experience is to enable participants to move into regular employment.

(~~E~~G) **Job-retention component.** A participant is assigned to job-retention classes when assessments indicate case management services, coaching, and peer support could help maintain employment and ~~succeed~~success in the workplace. This component is only allowed for 90-calendar days.

(4) **Supportive services.** Supportive services are provided to participants when necessary and directly related to their ability to participate in the OK SNAP ~~E&T~~Works component. DHS authorizes payments for supportive services that may include, but are not limited to, covering the cost of:

(A) child care under special circumstances. When child care is needed after assessment, the contracted service provider assists the client in completing a child care application. The application is sent to the OK SNAP ~~E&T~~Works coordinator to determine eligibility, per OAC 340:40;

(B) clothing;

(C) uniforms;

(D) tools;

(E) personal safety items;

(F) books or training manuals;

(G) transportation, such as bus tickets, public transportation passes, taxi cabs, sharing rides, or gas vouchers; or

(H) other equipment deemed necessary for participation.

(5) **Contractor responsibility.** The contracted service provider is responsible for tracking participation and informing the OK SNAP ~~E&T~~Works coordinator of the participation status and outcome performance measures for all referred persons.

(A) When a referred person fails to participate in OK SNAP ~~E&T~~Works following a referral, contracted staff notifies the Adult and Family Services (AFS) OK SNAP ~~E&T~~Works coordinator within 10-calendar days, of the non-participation.

(B) When the non-participant is an ABAWD who reached his or her food benefit receipt time limit, per OAC 340:50-5-100, the OK SNAP ~~E&T~~Works coordinator notifies the worker to close food benefits for the ABAWD effective the next advance-notice deadline date, per DHS Appendix B-2, Deadlines for Case Actions.

(6) **OK SNAP ~~E&T~~Works monitoring responsibilities.** The AFS OK SNAP ~~E&T~~Works coordinator provides oversight and monitors the contracted service provider's performance in operating the OK SNAP ~~E&T~~Works Program.

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 3. INCOME

340:50-7-22. Income exclusions

The worker excludes income listed in this Section from the household's countable income, from income of disqualified members whose income is counted, and from the income of ineligible aliens who would otherwise be household members. No other income is excluded.

(1) **In-kind income.** In-kind income is any gain or benefit that is not in the form of money payable directly to the household, including non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(2) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household.

(3) **Educational assistance.** Educational assistance including grants, work-study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt.

(4) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments provided by Developmental Disabilities Services (DDS) are excluded.

(5) **Income excluded by law.** Income excluded by law ~~are~~includes:

(A) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law (P.L.) 91-646, § 216. Such payments are:

(i) payments to persons displaced due to the acquisition of real property;

(ii) relocation payments to a displaced home owner toward the purchase of a replacement dwelling when the owner purchased and occupied the dwelling within one year following displacement; and

(iii) replacement housing payments to displaced persons not eligible for a home owner's payment;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act, P.L. 92-203 § 21(a);

(ii) under the Sac and Fox Indian Claims Agreement, P.L. 94-189;

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians, P.L. 94-540;

(iv) by members of the Confederated Tribes of the Mescalero Reservation, P.L. 95-433;

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation, P.L. 96-420; or

(vi) by an individual as a lump sum or a periodic payment via the Cobell settlement, per the Claims Resolution Act of 2010, P.L. 111-291 § 101(f)(2);

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program (RSVP), foster grandparents and others, of the Domestic Volunteer Services Act of 1973, P.L. 93-113 as amended;

(D) income derived from certain submarginal land of the United States held in trust for certain Indian tribes, P.L. 94-114, § 6;

(E) Indian per capita payments distributed from judgment awards and trust funds made per P.L. 98-64. Also excluded is 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 per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded, when they meet the distribution requirements stated in this paragraph. Any interest or income derived from the funds after distribution is considered as other income. The per capita exclusion applies per person rather than per family;

(F) income up to $2,000 per year received by individual Indians, derived from leases or other uses of individually-owned trust or restricted lands. The income exclusion applies to calendar years beginning January 1, 1994. Remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce Innovation and Opportunity Act (WIOA) of 2014, or other federally-funded workforce training program to persons of all ages and student status with the exception of income paid to persons 19 years of age and older for on-the-job training. This income is treated as any other earned income;

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Act, such as University Year for Action (UYA), Senior Companion Program, AmeriCorps Volunteers in Service to America (VISTA), and other AmeriCorps Programs are not included as income for purposes of determining food benefit eligibility and benefit level;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP) and utility payments, and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) ~~all funds that are paid to persons under the Community Service Employment Program under~~ benefits from State and Community Programs on Aging, per Title III and Title V~~, P.L. 100-175, authorized~~of the Older Americans Act of 1965 as amended by ~~the~~P.L. 114-144, Older Americans Act Reauthorization Act of 2016. Each state and various organizations receive Title V funds. These organizations include:

(i) Experience Works;

(ii) National Council on Aging;

(iii) National Council of Senior Citizens;

(iv) American Association of Retired Persons (AARP) Foundation;

(v) United States Forest Service;

(vi) National Association for Spanish Speaking Elderly;

(vii) National Urban League;

(viii) National Council on Black Aging; ~~and~~

(ix) National Council on Indian Aging;

(x) Asociación Nacional Pro Personas Mayores;

(xi) Associates for Training and Development, Inc.;

(xii) American Samoa;

(xiii) Easter Seals, Inc.;

(xiv) Goodwill Industries International, Inc.;

(xv) Institute for Indian Development;

(xvi) National Able Network;

(xvii) National Asian Pacific Center on Aging;

(xviii) National Caucus and Center on Black Aged, Inc.;

(xix) National Older Worker Career Center;

(xx) Operation A.B.L.E. of Greater Boston, Inc.;

(xxi) Senior Service America, Inc.;

(xxii) SER-Jobs for Progress National, Inc.;
(xxiii) Workplace, Inc.; and
(xxiv) VANTAGE Aging;

(L) Earned Income Tax Credit (EITC) payments received as part of a tax refund and also EITC advance payments received as part of a paycheck, P.L. 100-435;

(M) refunds of the state EITC as a result of filing a state income tax return;

(N) 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.);

(O) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry whose ancestors were detained in internment camps during World War II;

(P) 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;

(Q) payments for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(R) payments made to persons who were victims of Nazi persecution;

(S) funds distributed by the Federal Emergency Management Agency (FEMA) due to a disaster or an emergency to persons directly affected by such. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code ~~(U.S.C.)~~(38 U.S.C. § 1823(c)) provided to certain persons who are children of Vietnam War veterans;

(U) Disaster Unemployment Assistance paid to persons unemployed as a result of a major disaster;

(V) benefits paid to certain veterans and the spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II by the Filipino Veterans Equity Compensation Fund; ~~and~~

(W) money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account, per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes or a qualified ABLE Program account set up in any other state, per the ABLE Act of 2014, ~~(~~26 U.S.C. § 529A~~)~~ is excluded as income when the client:

(i) provides documents to verify the account meets exemption criteria;

(ii) verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount, per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and

(iii) verifies withdrawals from the account are used to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal; and

(X) is income received by a member of the United States Armed Forces, per 37 U.S.C. Chapter 5 and, per 273.9(c)(20) of Title 7 of the Code of Federal Regulations that is:

(i) received in addition to the service member's basic pay during combat deployment;

(ii) received as a result of the service member's deployment or service in an area designated as a combat zone as determined pursuant to Executive Order or P.L.; and

(iii) not received by the service member prior to the service member's deployment to or service in a federally designated combat zone.

(6) **Payments not considered income.**

(A) The payments in (i) through (iii) of this paragraph are not considered as income.

(i) Monies withheld from any income source to repay a prior overpayment from that same source.

(ii) Monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source.

(iii) Child support payments received by Temporary Assistance for Needy Families (TANF) recipients and sent to Child Support Services to maintain TANF eligibility.

(B) Monies withheld or returned to repay overpayments in federal, state, or local means-tested assistance programs are counted when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.

(i) In the Supplemental Nutrition Assistance Program (SNAP), willful misrepresentation is considered as intentional program violation.

(ii) The State Supplemental Payment to the Aged, Blind, and Disabled and TANF programs define intentional program violation using the terms restitution, fraud, and willful misrepresentation.

(iii) The Social Security Administration (SSA) and Veterans Benefits Administration programs define intentional program violation as fraud. Supplemental Security Income (SSI) is a means-tested program within SSA.

(7) **Reimbursements.**

(A) Reimbursements for past or future expenses to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household are

not considered. Examples of reimbursements may include:

(i) job or training-related expenses, such as travel, per diem, uniforms, and transportation to and from job or training sites;

(ii) out-of-pocket expenses incurred by volunteers in the course of work;

(iii) medical or dependent care; and

(iv) services provided by Title XX of the Social Security Act.

(B) When a reimbursement~~,~~ including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The reimbursement amount that exceeds the actual incurred expenses is counted as income. A reimbursement is not considered to exceed actual expenses unless the provider or household indicates the amount is excessive.

(C) The worker excludes any amount the employer adds to the employee's gross income as a benefit allowance to pay for a reimbursable expense, such as insurance or dependent care. When the monthly benefit allowance exceeds the monthly expense and the employer:

(i) includes the excess in the employee's pay each month, the worker counts the excess benefit allowance as earned income; or

(ii) retains any excess until the end of the year and then provides a yearly refund to the employee, the worker excludes the refund as income as it is considered a non-recurring lump sum payment per (10)(C) of this Section.

(8) **Money received for third parties.** The worker excludes money the household receives and uses for the care and maintenance of a third-party beneficiary who is not a household member.

(A) When the intended beneficiaries of a single payment include household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member is excluded.

(B) When the non-household member's portion cannot be readily identified, as in TANF cash assistance payments, the payment is evenly prorated among intended beneficiaries. The exclusion is applied to the non-household member's pro rata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

(9) **~~Earnings of a child~~Child's earnings.** ~~Earned income of~~When a child, ~~who~~ is head of his or her own household, his or her earned income is counted. The earned income of an elementary or high school student 17 years of age and younger, under parental control of an adult household member is excluded. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. When the child's earnings cannot be differentiated from those of other household members, the total earnings are prorated equally among the working members, and the child's prorated share is excluded.

(10) **Other types of excluded income.**

(A) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded as income. When the household states someone is loaning the household money to meet expenses, a statement signed by both parties is required indicating the payment is a loan and must be repaid. When the household states it receives loans on a recurrent or regular basis from the same source, the lender must sign an affidavit stating the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule.

(B) **Irregular Income.** Exclude any income in the certification period that is received too infrequently or irregularly to be reasonably anticipated that is $30 or less per quarter.

(C) **Non-recurring lump sum payments.** Exclude money received in the form of non-recurring lump sum payments including, but not limited to: income tax refunds, rebates, credits, retroactive lump sums from SSA, SSI, public assistance, Railroad Retirement pensions, other payments, or retroactive lump sum insurance settlements.

(D) **Cost of self-employment.** Exclude the cost of producing self-employment income, per Oklahoma Administrative Code 340:50-7-30.

(E) **Income of non-household members.** The income of non-household members who are not disqualified or ineligible aliens is not considered available to the household.

(F) **Charitable contributions.** Exclude cash contributions to a household from one or more private non-profit charitable organizations, not to exceed $300 in a federal fiscal year quarter. For the purposes of this provision a quarter includes these specific months:

(i) October, November, December;

(ii) January, February, March;

(iii) April, May, June; and

(iv) July, August, September.

(G) **Department of Housing and Urban Development's (HUD) Family Self-sufficiency Program (FSS) escrow accounts.** Families participating in the HUD FSS program may withdraw money from escrow accounts prior to completion of the program. This money is excluded as income.

(H) **Individual Development Account (IDA).** Any funds deposited in an IDA operated under the Assets for Independence Act and the interest that accrues is excluded as income.

340:50-7-29. Income inclusions

(a) **Sources of income considered.** The worker considers all household income, unless specifically excluded per Section

273.9(c) of Title 7 of the Code of Federal Regulations (7 § C.F.R. 273.9(c)) and Oklahoma Administrative Code (OAC) 340:50-7-22, in determining monthly gross income. Income is classified as earned or unearned.

(1) When one or more household members are absent from the home, before deciding whether to consider the absent household member's income, the worker must determine if the person returns to the home for part of the month.

(A) Per OAC 340:50-5-2, the worker does not include the absent member in the benefit amount and only counts the portion of his or her income that he or she makes available to the rest of the household when the household member does not return for part of the month.

(B) When the household member returns for part of each month, the worker includes him or her in the benefit amount and counts all of his or her income unless excluded per OAC 340:50-7-22.

(2) Per OAC 340:50-5-5, the household has the option of including a child receiving a foster payment that includes a payment for kinship care, or a Developmental Disability Services (DDS) room and board payment in the food benefit. When the household chooses not to include the child in the food benefit, the worker does not count the child's income, including the foster or DDS room and board payment.

(3) When the household adopts a child previously in the custody of the Oklahoma Department of Human Services (DHS) and receives an adoption subsidy payment for the child, the worker includes the child in the food benefit and counts the child's income, including the adoption subsidy payment.

(4) When a member of the household becomes the guardian of a child and receives a guardianship payment from DHS, the payment is considered as income. The child for whom the payment is received must be included in the food benefit.

(b) **Earned income.** Per 7 C.F.R. § 273.9(b)(1), earned income is income a household receives in the form of wages, commission, self-employment, or training allowances, and for which a person puts forth physical labor. Temporary disability insurance payments and temporary workers' compensation payments are considered earned income when payments are employer-funded and the person remains employed. The types of earnings listed in (1) through (4) of this subsection, including money from the sale of whole blood or blood plasma or a DDS payment to an extended family care provider for services rendered in addition to the child's room and board payment, are considered earned income.

(1) **Wages.** Wages and salaries include sick pay paid by the employer to an employee who plans to return to work when recovered, excess benefit allowance payments, and wages garnished or diverted to pay a third party for a household's expenses. Countable wages for military personnel include any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) and the Basic Allowance for Subsistence (BAS).

(2) **S corporations.** When a household member is a shareholder in an S corporation, he or she may receive profits from the business in two ways; as a salary and/or as a profit share of the business. Both types of income are reported on the household member's personal income tax return. Salary income is considered as earned income and profit share income is considered as unearned income per (c)(7) of this Section.

(~~2~~3) **Self-employment.** Refer to OAC 340:50-7-30 for self-employment income procedures.

(~~3~~4) **Title I payments of the Domestic Volunteer Services Act.** Countable earned income includes payments paid to a household member under Title I of the Domestic Volunteer Services Act of 1973 as amended per Public Law (P.L.) 93-113, unless excluded per OAC 340:50-7-22.

(~~4~~5) **On-the-job training (OJT).** The worker counts income earned in OJT positions as earned income. This includes OJT provided per Section 3(44) of the Workforce Innovation and Opportunity Act of 2014, P.L. 113-128 for persons 19 years of age or older.

(c) **Unearned income.** In general, unearned income is income a household receives and is not in the form of wages, self-employment, or training allowances, and for which a person does not put forth physical labor. The income listed in (1) through (6) of this subsection, while not all inclusive, are considered unearned per 7 C.F.R. § 273.9(b)(2).

(1) **Assistance payments.** The worker counts payments from a federally-aided public assistance program, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments, as unearned income. When such payments are received by a third party, they are counted as income for the person to whom it is legally owed.

(A) A household's food benefit amount does not increase when the public assistance benefit the household receives under a federal, state, or local means-tested public assistance program is reduced, suspended, or closed because the public assistance program imposed a penalty due to an intentional program violation determined as fraud or a household member's failure to comply with a requirement of that program.

(i) To impose a food benefit sanction, the person must be certified for Supplemental Nutrition Assistance Program (SNAP) benefits at the time of the failure to comply and receiving regular benefits from the other program at the time fraud occurred or the household failed to comply with a substantive program requirement.

(ii) Examples of means-tested public assistance programs include SSI and TANF.

(iii) Substantive requirements are behavioral requirements of that program designed to improve the well-being of the household. For TANF, this includes:

(I) complying with TANF Work requirements per OAC 340:10-2. OAC 340:10-2-2

explains the TANF penalty considered for SNAP when the household fails to comply with TANF Work activities;

(II) cooperating to obtain child support per OAC 340:10-10-5;

(III) providing a Social Security number per OAC 340:10-12-1;

(IV) ensuring school-age children regularly attend school per OAC 340:10-13-1;

(V) verifying children meet immunization requirements per OAC 340:10-14-1; and

(VI) not using the TANF benefit in a prohibited business per OAC 340:10-1-3.

(iv) Procedural requirements that do not trigger a penalty include failing to:

(I) provide verification;

(II) complete an interview; or

(III) complete a benefit renewal.

(v) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, DHS is not held responsible. The worker must make a good faith effort to get the needed information and record the details and results of this effort in the case file.

(vi) The worker does not reduce, suspend, or close the household's current food benefit amount when the benefits under another assistance program are decreased.

(vii) When the worker adds eligible members to the food benefit, the benefit must be adjusted regardless of whether the household is prohibited from receiving benefits for the additional member under another federal, state, local welfare, or public assistance means-tested program.

(viii) Changes in household circumstances not related to the penalty imposed by another federal, state, local welfare, or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(ix) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty or until DHS cannot determine the amount of the penalty.

(x) SNAP sanctions extending beyond one year must be reviewed at least annually to determine if the sanction continues to apply.

(B) The provision in (A) of this paragraph does not apply to persons or households subject to disqualification from SNAP for noncompliance with a comparable work requirement per Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income. When a third party receives Social Security benefits it is counted as income for the person to whom it is legally owed. The worker considers disability payments as:

(A) unearned income when the person is no longer considered an employee of the company and an agency outside of the company pays the disability benefits; and

(B) earned income when the person is still considered an employee of the company and the company pays the disability benefits.

(3) **Support and alimony.** The worker counts support and alimony payments paid directly to the household from non-household members as unearned income. The worker also counts money deducted or diverted to a third party to pay a household expense as unearned income when the court order directs the payment be made to the household. The worker does not count money the court order states must be paid to a third party as income.

(4) **Grants, dividends, royalty, and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, grants, dividends, royalties, interest, and all other direct money payments from any source construed to be a gain or profit are considered income. The worker treats income from these sources as unearned income. The household must provide proof of income from these sources so income can be averaged to determine monthly countable income.

(5) **Monies withdrawn or dividends that are or could be received by a household from trust funds.** Dividends the household has the option of either receiving as income or reinvesting in the trust are considered income in the month they become available to the household.

(6) **Department of Veteran's Affairs (VA) Aid and Attendance.** When a person receives VA Aid and Attendance income and does not pay someone outside of the food benefit household to care for him or her, this is countable income. Any portion of the VA Aid and Attendance paid to someone outside of the food benefit household for care is excluded.

(7) **Profit sharing.** When a household member is a shareholder in an S corporation or a partner in a limited partnership or limited liability company, he or she may receive a distribution or profit share of the business. This is considered as unearned income.

(d) **Income of excluded household members.** Per OAC 340:50-5-10.1, excluded household members are termed as disqualified or ineligible. The worker does not consider the needs of a disqualified or ineligible household member when determining the household's size for purposes of assigning a benefit level to the household or comparing the household's monthly income with the income eligibility standard per 7 C.F.R. § 273.11(c)(2)(iv).

(1) **Disqualified household members.** The worker counts the disqualified household member's income in its entirety as available to the remaining household members per 7 C.F.R. § 273.11(c)(1)(i). The worker does

not prorate utility, medical, dependent care, child support expenses, or excess shelter deductions. Per OAC 340:50-5-10.1, disqualified household members are those excluded for:

(A) committing an intentional program violation~~per Oklahoma Administrative Code (OAC) 340:50-5-4 or 340:50-15-25~~;

(B) failing to meet work registration requirements~~per OAC 340:50-5-85 through OAC 340:340-50-5-87~~;

(C) meeting fleeing felon criteria~~per OAC 340:50-5-10.1~~; or

(D) being a probation or parole violator~~per OAC 340:50-5-10.1~~.

(2) **Ineligible household members.** The worker prorates the income of ineligible household members among all household members per 7 C.F.R. § 273.11(c)(2)(ii).

(A) Per OAC 340:50-5-10.1, ineligible household members are those excluded because they do not meet a program requirement, such as:

(i) failure to obtain or refusal to provide a Social Security number~~per OAC 340:50-5-68~~;

(ii) not being a citizen or qualified alien~~per OAC 340:50-5-67~~; or

(iii) being an able-bodied adult without dependents and not meeting work requirements~~per OAC 340:50-5-100~~; or

(iv) failure to cooperate with providing requested verification regarding unclear information.

(B) The worker counts a pro rata share of the ineligible household member's income as income available to the remaining members by first subtracting the allowable income exclusions per OAC 340:50-7-22 from the ineligible member's income and dividing the income evenly among the eligible household members and the ineligible member.

(C) The worker counts all but the ineligible member's share as income available to the remaining household members. The earned income deduction, per OAC 340:50-7-31 and DHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, applies to the prorated income attributed to the household when it was earned by the ineligible member.

(D) The portion of the household's allowable shelter, child support, and dependent care expenses paid by or billed to the ineligible member is divided evenly among the household members, including the ineligible member. All but the ineligible member's share is considered a deductible shelter expense for the remaining household members, with the exception of utility expenses per 7 § C.F.R. 273.9(d)(6)(iii)(F). When the household is responsible for utility expenses, the household is allowed the full utility standard for which it qualifies per OAC 340:50-7-31.

340:50-7-30. Self-employed households

(a) **Person considered self-employed.** A person is considered self-employed when:

(1) he or she declares himself or herself to be self-employed;

(2) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even when required by law to do so; or

(3) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(b) **Self-employment income.** Self-employment income received by household members whose income is derived from a self-employment enterprise owned solely or in part by the household member or when the household member works for an employer, but is considered self-employed per (a) of this Section, is treated per (1) through (10) of this subsection.

(1) **Capital gains.** The worker counts as income the proceeds from the sale of capital goods or equipment and calculates it in the same manner as a capital gain for federal income tax purposes. Even though a percentage of the proceeds from the sale of capital goods or equipment are taxed for federal income tax purposes, the worker counts the full amount of capital gain as income.

(2) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies (LLC) may receive profit sharing that is reported on the household's personal income tax return. ~~When a household member:~~

~~(A) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or~~

~~(B) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.~~

(A) S corporation profit sharing is considered unearned profit sharing income. Refer to Oklahoma Administrative Code (OAC) 340: 50-7-29(b)(2) and (c)(7) for information regarding S corporations.

(B) Partnerships are unincorporated businesses with two or more partners. When a household member is a partner in a business, he or she is considered self-employed and not an employee or the business. Each partner receives a profit share from the business. When a business is considered a:

(i) general partnership or LLC with a member-manager, each partner's share of the business income is shown as self-employment income on his or her federal income tax form;

(ii) limited partnership or other LLC member, each partner's share of the business income is shown as self-employment income or unearned profit sharing income on his or her federal income tax form.

(3) **Self-employed farm income.** To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1,000 or more from the farming enterprise.

(A) Farming is defined as cultivating or operating a farm for profit either as owner or tenant.

(B) A farm includes stock, dairy, poultry, fish, fruit, truck farms, or plantations, ranches, ranges, or orchards.

(i) A fish farm is an area where fish are grown or raised, artificially fed, protected, and cared for, and does not include an area where they are only caught or harvested.

(ii) A plant nursery is a farm for purposes of this definition.

(C) Per Section 273.11(a)(2)(ii) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.11(a)(2)(ii)), when the cost of producing self-employment farm income exceeds the income received, the worker offsets the losses against other countable household income by:

(i) first offsetting the losses against other self-employment income; and

(ii) then offsetting any remaining farm self-employment losses against the total amount of earned and unearned income received by the household after applying the earned income deduction, per ~~Oklahoma Administrative Code (~~OAC~~)~~ 340:50-7-31(a)(2).

(D) When the household's self-employment farm income exceeds the cost of producing the farm income and there are no losses to offset, the worker calculates the self-employment farm income as regular self-employment income per (b)(7) of this Section.

(4) **Monthly self-employment income.** Self-employment income received on a monthly basis that represents a household's annual support, is normally averaged over a 12-month period. When the averaged amount does not accurately reflect the household's actual monthly circumstances because the household experienced a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(5) **Seasonal self-employment income.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. For example, the income of self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year is averaged over the summer months rather than a 12-month period.

(6) **Annualized self-employment income.** Self-employment income that represents a household's annual support must be annualized over a 12-month period, even when the income is received in a shorter period of time. For example, self-employment income received by crop farmers must be averaged over a 12-month period when the income represents the farmer's annual support.

(A) When the household's self-employment income has been received for less than a year, the income must be averaged over the period of time received and the monthly amount projected for the coming year.

(B) When the household's self-employment income has been received for a short time and there is insufficient data to make a reasonable income projection, the worker does not consider income from this source until the benefit renewal or certification renewal month. At benefit renewal or certification renewal, the worker averages the income over the number of months received until a full year's information is available.

(7) **Determining net monthly annualized self-employment income.** When the household has business expenses associated with its self-employment income, the business expenses must be deducted before determining if the household meets the maximum gross income standards per Oklahoma Department of Human Services (DHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. When the household does not have business expenses, the gross self-employment income is used.

(A) When the household filed an income tax return on its self-employment income for the most recent year, the worker uses the gross self-employment income shown on the income tax return, subtracts 50 percent of the income for claimed business expenses, and divides the net self-employment income by the number of months to be averaged per 7 C.F.R. § 273.11(b)(3)(iv).

(B) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) of this subparagraph to determine the net monthly self-employment income.

(i) The worker computes gross self-employment income, including capital gains, using the household's self-employment business records or employer records, when applicable.

(ii) When the household declares incurred business expenses, the worker subtracts 50 percent of the gross self-employment income as business expenses per 7 C.F.R. § 273.11(b)(3)(iv). When the household did not incur business expenses, a business expense deduction is not given.

(iii) The worker then divides the net self-employment income by the number of months to be averaged.

(C) The worker adds monthly net self-employment income to all other earned income received by the household. When the household reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) The worker adds the total monthly earned income, less the earned income deduction per DHS Appendix C-3 to all other monthly income received by the household.

(ii) The worker subtracts the standard deduction, dependent care, and shelter costs as for any other household per OAC 340:50-7-31 to determine the monthly net income of the household.

(8) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in income, the worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns. Instead, the worker calculates the self-employment income using only the income that can reasonably be anticipated to project future earnings. The worker uses procedures in (b)(7)(B) and (C) of this Section to determine net monthly self-employment income.

(9) **Household with income from boarders.** A household that operates a commercial boarding house may be considered a food benefit household and self-employed per (7) of this subsection. A household with boarders or roomers that is not a commercial boarding house may receive food benefits per (A) through (C) of this paragraph.

(A) The worker excludes a person paying a reasonable amount for room and board from the household and counts payments from the boarder as self-employment income when determining the household's eligibility and benefit level.

(i) The income from a boarder includes all direct payments to the household for room and meals, including contributions to the household for part of the household shelter expense.

(ii) The worker does not count expenses paid directly by a boarder to someone outside the household as income to the household.

(B) The worker excludes 50 percent of the boarder payment as the cost of doing business.

(C) The worker includes the net income from self-employment with other earned income minus the earned income deduction.

(i) The worker computes the shelter cost incurred by the household, even when the boarder contributes part of the shelter expense, to determine if the household qualifies for a shelter deduction.

(ii) The shelter and utility cost must not include any expense billed to and directly paid by the boarder to a third party.

(10) **Income from rental property.** The worker considers income received from rental property as self-employment income.

(A) The worker treats rental income as earned income when a member of the household actively manages the property an average of at least 20 hours per week.

(B) When a household member does not actively manage the property at least 20 hours each week, the worker considers the income as unearned. The person is eligible for business expenses per (7) of this subsection.

340:50-7-31. Deductions

(a) **Deductible expenses.** ~~Per,~~Households are allowed certain deductible expenses from income as described in (1) through (6) of this subsection and per 273.9(d) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.9(d)). The household reports current medical, dependent care, legally-binding child support, and shelter expenses at certification, mid-certification renewal, and certification renewal. The household must also report current shelter costs when the household moves.

(1) **Standard deduction.** All households are allowed a standard deduction per Oklahoma Department of Human Services (DHS) Appendix C-3, Maximum Food Benefits Allotments and Standards for Income and Deductions.

(2) **Earned income deduction.** Households with earned income are allowed an earned income deduction per DHS Appendix C-3 to cover the cost of state and local income taxes, pensions, union dues, and work related expenses. Refer to Oklahoma Administrative Code (OAC) 340:50-7-30 for information regarding business expenses for self-employed persons.

(3) **Medical expense deduction.** A medical expense deduction is only allowed for household members meeting the definition of elderly or disabled per OAC 340:50-5-4. For these household members, medical expenses exceeding $35 per month are deductible when verified. The $35 is subtracted from medical expenses once per household, not per person, when the household has more than one elderly or disabled member.

(A) **Allowable medical expenses.** Allowable medical expenses must be prescribed or approved by a state licensed or qualified practitioner and include:

(i) medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional authorized by state law;

(ii) hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for a person who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state;

(iii) prescription drugs and other over-the-counter medication including insulin, when approved by a licensed practitioner or other qualified health professional authorized by state law. Costs of medical supplies, sick-room equipment including rentals, or other prescribed equipment are also included;

(iv) health, dental, and hospitalization policy premiums;

(v) Medicare premiums and any cost-sharing or spend-down expenses incurred by Medicare or SoonerCare (Medicaid) recipients;

(vi) dentures, hearing aids, and prosthetics;

(vii) eye glasses prescribed by a licensed practitioner;

(viii) reasonable cost of lodging and transportation to obtain medical treatment or services. Lodging costs are allowed when the elderly or disabled member is required to spend the night away from home to receive medical services. Reasonable transportation costs are based on the type of

transportation used. When the elderly or disabled member:

(I) uses his or her ~~own~~ vehicle, the state's current mileage reimbursement is allowed;

(II) uses public transportation, the actual cost of the transportation is allowed; or

(III) pays a non-household member for transportation, the amount charged by the person is allowed;

(ix) maintaining an attendant, homemaker, home-health aide, child care services, or housekeeper due to age, infirmity, or illness. When this expense also qualifies as a dependent care expense per (4) of this subsection, it is considered a medical expense rather than a dependent care expense. Additionally, when the household furnishes a majority of the caretaker's meals, an amount equal to one allotment is added to the medical expense for meals provided. The allotment used is the amount in effect at certification; and

(x) costs associated with all service animals specially trained to serve the needs of elderly or disabled program participants. This includes maintenance costs, such as veterinary bills, food, and other expenses for these service animals.

(B) **Medical expenses not allowed.** Expenses not allowed include:

(i) costs associated with special diets;

(ii) premiums for health and accident insurance policies, such as those payable in lump sum settlements for death or dismemberment;

(iii) premiums for income maintenance policies, such as those that continue mortgage or loan payments while the beneficiary is disabled;

(iv) items that can be purchased with food benefits, such as dietary supplements; and

(v) the cost of meals or other incidentals when the person spends the night away from home to receive medical services.

(C) **Medical expense verification requirements.** Households are required to report and verify medical expenses at certification and certification renewal. Households are not required to report changes in medical expenses during the certification period.

(i) When a household voluntarily reports a reduction in medical expenses that will decrease the food benefit allotment, no verification is needed. However, the change requires notice of adverse action per OAC 340:50-9-5.

(ii) When a household voluntarily reports additional medical expenses that will increase the food benefit allotment, the household must verify the additional expenses before the worker changes the medical expense deduction.

(iii) When the additional medical expenses are one-time expenses, such as hospital costs, dental expenses, or the purchase of prescription eyeglasses, the expense is only allowed when the person reports and verifies the expense before it becomes past due. When a portion of the expense will be paid by a vendor or insurance payment, the worker does not allow the expense until the amount owed by the person is verified. Once verified, the household may choose to:

(I) deduct the entire expense in the month incurred or when it becomes due;

(II) average the expense over the remaining months of the certification period; or

(III) average the expense over the scheduled length of a payment plan.

(iv) When the worker finds out about a change from a source other than the household, the change is acted on when verified upon receipt, such as when the worker is notified via data exchange of a Medicare premium change. The worker does not contact the household for additional information. When the change requires household contact for additional information or verification, the worker does not make the change.

(v) When a household reports but does not verify an anticipated medical expense, the worker informs the household the expense will be allowed when the household provides verification.

(4) **Dependent care.** Dependent care is payment for the actual cost for the care of a child <u>under 18 years of age</u> or other dependent <u>of any age with disabilities</u> when necessary for a household member to seek, accept, or continue employment or to attend training or education preparatory to employment. <u>Dependent care costs may include activity fees and the cost of transportation to and from the dependent care facility.</u>

(A) The deduction applies regardless of whether the household member is subject to the Supplemental Nutrition Assistance Program Employment and Training requirements.

(B) When the expense also qualifies as a medical expense <u>per (a)(3) of this Section</u>, it is considered a medical expense rather than a dependent care expense.

(C) There is no maximum dependent care deduction. The total reported by the client is an allowable expense as long as it meets the criteria in this Section.

(D) Dependent care is only verified when the expenses claimed actually result in a deduction and other information available to the worker is inconsistent with the household's claim that it incurs a dependent care expense.

(5) **Legally-binding child support.** A deduction is allowed for verified legally-binding child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member.

(6) **Shelter costs.** A household is allowed a shelter deduction when the monthly shelter cost exceeds 50 percent of the household's income after all other deductions are allowed. The shelter deduction cannot exceed the

maximum amount allowed per DHS Appendix C-3, unless the household includes an elderly or disabled member. Households with an elderly or disabled member receive an excess shelter deduction for the monthly cost exceeding 50 percent of the household's income after the deductions listed in (1) through (6) of this subsection are allowed. When the household includes a non-household member or disqualified member, refer to (b)(4) and (5) of this Section to determine whether to prorate shelter costs.

(A) **Allowable rent or mortgage costs.** Allowable rent or mortgage costs for the shelter occupied by the household include, the:

(i) monthly rent or mortgage payment, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments;

(ii) charge for renting or buying the land on which a mobile home is located;

(iii) property taxes, state and local assessments, and insurance on the structure. A mobile home is taxed as part of the property tax when the land is owned or being purchased;

(iv) personal property tax for unregistered mobile homes on rented land; or

(v) monthly vehicle payment when a homeless household lives in the vehicle.

(B) **Expenses not considered as shelter costs.** The worker does not consider as shelter costs, the cost for:

(i) insuring furniture or personal belongings when paid separately from the insurance on the home;

(ii) vehicle registration or a tag for a mobile or motor home; or

(iii) personal property tax except as allowed per (6)(A)(iv) of this subsection.

(C) **Allowable utility costs.** When the household incurs utility expenses, it is eligible for one of three standard utility allowances based on criteria in (i) through (iii) of this subparagraph. The applicable utility standard amount is specified per DHS Appendix C-3.

(i) The standard utility allowance (SUA) is based on annual averages that include costs for heating or cooling; and cooking fuel, electricity, basic phone service, water, sewage, and garbage. This includes households that receive Low Income Heat Energy Assistance Payments (LIHEAP).

(I) The household is eligible for the SUA when the household is billed for heating or cooling during the year. Households billed less often than monthly for heating costs, such as butane or propane may continue to use the utility standard between billing months.

(II) When a household reports they no longer incur a heating or cooling expense, but still have a utility expense, the standard must be changed to the basic utility allowance (BUA) or telephone standard.

(III) When a household's heating or cooling expenses are partially reimbursed or paid by an excluded payment, such as a vendor payment, Housing and Urban Development (HUD), or Farmers Home Administration (FmHA) payment, the household remains eligible for the SUA.

(ii) The BUA includes utility charges the household incurs other than for heating and/or cooling, such as cooking fuel, water, sewage, garbage collection, and basic phone service.

(iii) The telephone standard is used when the household is not entitled to use the SUA or BUA, but has a phone cost.

(D) **When shelter costs for an unoccupied home are allowed.** Shelter costs for an unoccupied home may be allowable when the household is temporarily away from home because of illness, a disaster or casualty loss to the home, or to attend an employment or training opportunity.

(i) For the cost of a vacated home to be included in shelter costs the:

(I) household must intend to return to the home;

(II) current occupants of the home, if any, must not claim the shelter costs during the household's absence; and

(III) home must not be rented or leased during the household's absence.

(ii) A household that has an occupied home and an unoccupied home is only allowed one standard utility deduction.

(b) **Expense calculation.** The worker calculates a household's expenses based on the expenses the household expects to be billed for during the certification period. The worker anticipates expenses based on the most recent month's bills unless the household is reasonably certain a change will occur.

(1) **Billing fluctuations.** The household may elect to average expenses when the billed amount fluctuates monthly, is billed less often than monthly, or as in the case of some medical expenses, the expense changes throughout the certification period.

(2) **When expenses are owed but not paid.** The household is allowed a deduction in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. A particular expense may be deducted only once.

(3) **Reimbursed expenses.** The portion of an expense paid by an excluded reimbursement or vendor payment is not deductible. The amount left after deducting the excluded payment is deductible and includes HUD and FmHA rent and utility payments. Expenses are only deductible when the service is provided by someone outside of the household and the household makes a monetary payment for the service.

(4) **One-time expenses.** The household may choose to average one-time expenses over the entire certification period in which they are billed per 7 C.F.R. § 273.10(d)(3). When the household reports a one-time expense during the certification period, the household may choose to:

(A) deduct the entire expense for the next effective month; or

(B) average the expense over the remaining months in the certification period beginning with the next effective month. When the household is certified for 24 months and the one-time expense was incurred in the:

(i) first 12 months of the certification period, the household may elect to deduct the expense in one month, average the expense over the remaining months in the first 12 months of the certification period or average the expense over the remaining months in the certification period;

(ii) the second 12 months of the certification period, the household may elect to have the expense deducted in one month or averaged over the remaining months in the certification period.

(5) **When the household includes a disqualified household member.** When the household includes a disqualified household member per OAC 340:50-5-10.1, the worker does not prorate allowable deductions because the disqualified member's income is counted in its entirety per OAC 340:50-7-29(d).

(6) **When the household includes an ineligible household member.** When the household includes an ineligible household member per OAC 340:50-5-10.1, the worker prorates the allowable deductions evenly between the household members, including the ineligible member except for utility expenses because the ineligible member's income is also prorated per OAC 340:50-7-29(d). When the household is responsible for utility expenses, the household is allowed the full utility standard deduction for which it qualifies per ~~OAC 340:50-7-31~~(a)(6)(C) of this Section.

(7) **When the household includes a non-household member.** When the household shares deductible expenses with a non-household member, the worker only deducts the amount the household actually pays or contributes toward household expenses with the exception of the utility expenses. When the household pays part of the utility expenses, the household is allowed the full utility standard deduction for which it qualifies, per ~~OAC 340:50-7-31~~(a)(6)(C) of this Section. When the payments or contributions cannot be differentiated, the worker prorates the expenses evenly among persons actually paying or contributing to the expense and deducts only the household's pro rata share with the exception of the utility expenses.

PART 5. DETERMINATION OF INCOME

340:50-7-46. Converting to monthly income

(a) **Converting income.** When the household receives income more often than monthly, the worker converts the income to a monthly amount as indicated in (1) through (5) of this subsection. When the amounts to be converted differ, such as fluctuating daily, weekly, or biweekly amounts, the worker averages the income per (c) of this Section. The worker carries cents through all steps and then rounds the monthly income amount to the nearest dollar with one cent through 49 cents rounded down and 50 cents through 99 cents rounded up.

(1) **Daily.** The worker converts income received on a daily basis to a weekly amount. When there is a consistency in days worked each week and a regularity of pay dates, the worker multiplies the weekly income by 4.3. When there is no consistency, refer to (5) of this subsection for irregular income processing.

(2) **Weekly.** The worker multiplies income received weekly by 4.3.

(3) **Twice a month.** The worker multiplies income received twice a month by 2.

(4) **Biweekly.** The worker multiplies income received every two weeks by 2.15.

(5) **Irregular income.** The worker does not convert income received at irregular intervals by 4.3, 2, or 2.15, when there is no consistency in the work offered or when pay is received. Instead, the worker adds all irregular income received in the calendar month together to arrive at a monthly average. When more than one month of irregular income is available, the worker totals the income and divides it by the number of months used.

(b) **Anticipating income.** For the purpose of determining the household's eligibility and monthly benefit allotment, the worker takes into account the income already received by the household and any anticipated income the household is reasonably certain to receive during the certification period per Section 273.10(c)(1) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.10).

(1) **Application month income.** In the application month, the household's anticipated income may be less than a full month's wages. In this case, the worker uses actual or actual anticipated income for the month of application. When the person receives an extra paycheck in the application month due to a third or fifth week and the income is ongoing, the worker converts the income to anticipated income for the application month. For the remaining months of the certification period, the worker averages and converts the income to a monthly amount.

(2) **Uncertain income.** The worker does not count income when the date and amount to be received is uncertain. Examples of uncertain income include, when a household's anticipated income is from a new job and the date and amount of the first paycheck is not known or when a household member recently applied for public assistance or unemployment benefits and does not know if or when the initial payment may be made.

(A) The worker does not consider the anticipated payment unless there is reasonable certainty concerning the month the payment will be received and the amount of the payment.

(B) When some, but not all, household income is not known, the portion that can be anticipated with reasonable certainty must be considered as income.

(C) When the worker can reasonably anticipate income receipt, but the monthly amount fluctuates, the worker may elect to average the income per (c) of this Section.

(D) Households are advised to report all changes in gross monthly income as required.

(3) **Income received in the past 30-calendar days.** Income received during the past 30-calendar days may be used as an indicator of income anticipated to be available to the household during the next certification period. Past income is not used to anticipate future income for any month in which an income change occurred, can be anticipated, or terminated.

(4) **Regular employment.** When the head of the household or other members of the household have regular employment, income from previous months is a good indicator of the amount of income to anticipate for the application month and subsequent months. When the household or collateral contact supplies information indicating future income will differ substantially from the previous month's income, the worker uses the information to make a reasonable estimate of the anticipated income.

(5) **Withheld wages.** Wages withheld at the request of the employee are considered income to the household in the month the wages would otherwise be paid by the employer. Wages withheld by the employer as a general practice, even when in violation of the law, are not counted as income to the household unless the household anticipates it will ask for and receive an advance, or the household anticipates that it will receive income from previously held wages. Advances on wages are counted as income when they can be reasonably anticipated.

(c) **Averaging income.** Households, except for destitute and migrant or seasonal farm worker households, may have their income averaged per 7 C.F.R. § 27310(c)(3). To determine the household's eligibility, the worker adds all other income to the averaged monthly income and subtracts applicable income exclusions and deductions in the normal manner.

(1) **Fluctuating income.** Households with fluctuating income may elect to have the income averaged.

(A) When the household indicates the most recent 30-calendar ~~days~~day's income is representative of anticipated future earnings, the worker uses this income to compute gross monthly income.

(B) When the household indicates the most recent 30-calendar days of income is not representative of anticipated future income, the worker averages additional months of income to compute a representative anticipated monthly gross income.

(C) Income received more often than monthly is converted to a monthly income prior to determining a monthly average. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, ~~if~~when fluctuating income for the past 30-calendar days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income for the two months may be averaged and projected over the certification period.

(2) **Employment contract and self-employment.** When households derive their annual income by contract or self-employment in a period of time shorter than one year, the worker annualizes the income over a 12-month period. These households may include school employees, sharecroppers, farmers, and other self-employed households. These provisions do not apply to migrant or seasonal farm workers or to contracted employees who receive income on an hourly or piece work basis.

(d) **Income from the Social Security Administration (SSA).** The Oklahoma Department of Human Services receives income information from SSA regarding SSA and Supplemental Security Income (SSI) benefit recipients through automated data exchange records. When using the:

(1) Beneficiary and Earnings Data Exchange System (BENDEX) ~~or the State Data Exchange System (SDX)~~ to verify SSA benefits~~or Supplemental Security Income~~, the worker drops any cents from the gross benefit amount~~.~~; or

(2) State Data Exchange System (SDX) to verify SSI, the worker rounds any cents to the nearest dollar to determine countable gross income.

SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

340:50-9-1. Determining the food benefit allotment

(a) **Cases with unverified deductible expenses.**

(1) **Food benefits without deductions.** When a deductible expense that must be verified, per Oklahoma Administrative Code (OAC) 340:50-7-31 cannot be verified within the 30-day processing standard for applications, the worker determines the household's benefit level without giving a deduction for the claimed, but unverified expense.

(2) **When the household is ineligible unless deductible expense is allowed.** When a deductible expense cannot be verified before the 30-day processing standard for applications expires and the household is ineligible unless the expense is allowed, the worker:

(A) denies the application on the 30th day when the worker gave the household at least 10-calendar days to verify the expense; or

(B) delays making a decision until the 10-calendar day verification period expires.

(b) **Determining household eligibility.** The worker determines the household's eligibility based on gross or net monthly income standards per (3) or (4) of this subsection unless the

household is considered a categorically eligible household, per OAC 340:50-11-113(a) and (2) of this subsection. When changes in household composition or other circumstances occur, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The worker changes the income standard when making other changes to the household's eligibility, benefit level, or certification period, or at certification renewal, whichever is earlier.

(1) **Income and expense calculation.** The worker calculates the household's gross income before subtracting deductible expenses to arrive at the net monthly income for the household.

(A) The worker calculates each source of monthly gross income separately for each person, using dollars and cents, and then rounds cents to the nearest dollar. The worker rounds one cent through 49 cents down and 50 cents through 99 cents up.

(B) The worker uses the same rounding method for each deductible expense. Deductible expenses are subtracted from gross income to arrive at the net monthly household income. Deductible expenses may include dependent care, shelter, legally-binding child support payments, or medical expenses.

(2) **Categorically eligible households.** Per Section 273.2(j) of Title 7 of the Code of Federal Regulations ~~(7 C.F.R § 273.2)~~ and OAC 340:50-11-113(a), categorically eligible households in which all household members receive Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI) are not subject to the gross or net income standards per (3) or (4) of this subsection.

(3) **Households without elderly or disabled members.** Households that do not include an elderly or disabled member and are not considered categorically eligible per (2) of this subsection are not eligible for food benefits when the household's total gross monthly income exceeds the gross monthly income standard by household size on Table I of the Oklahoma Department of Human Services (DHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. When the household meets the gross income standard and non-financial conditions of eligibility, per OAC 340:50-5, the worker computes the household's net monthly income to determine eligibility. When the net food benefit income does not exceed the net income by household size on the food benefit allotment chart on the Appendix C-3, the household is determined eligible. The worker follows steps (A) through (H) to determine the household's net food benefit monthly income.

(A) Add gross monthly income earned by all household members, per (1) of this subsection including any net self-employment income, per OAC 340:50-7-30 to determine the household's total gross earned income.

(B) Subtract the appropriate earned income deduction per DHS Appendix C-3 to determine the net monthly earned income. The household is not eligible for the earned income deduction on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions, per OAC 340:50-7-22.

(D) Subtract the standard deduction, per DHS ~~per~~ Appendix C-3.

(E) Subtract monthly dependent care expenses. A dependent care deduction is not allowed when dependent care expenses are reimbursed or paid for under an employment and training (E&T) program or other source.

(F) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(G) Add together the allowable shelter expenses, including the appropriate utility standard, to determine the household's total shelter costs. Subtract from the total shelter costs 50 percent of the adjusted income, the household's monthly income after all of the deductions given in (A) through (F) of this paragraph are subtracted. The remaining amount, if any, is the excess shelter costs. When there are no excess shelter costs, the net monthly income is determined. When there are excess shelter costs, proceed to the next step.

(H) When the total shelter costs exceed the maximum shelter cost deduction shown in DHS Appendix C-3, only the amount not exceeding the maximum shelter cost deduction is deducted.

(4) **Households with an elderly or disabled member.** When a household that includes an elderly or disabled member meets the non-financial conditions of eligibility, per OAC 340:50-5, the household's net food benefit monthly income, and household size are the basis for determining eligibility. The worker compares the household's net food benefit monthly income to the Maximum Net Income Standards for the appropriate household size shown on Table II of DHS Appendix C-3. When the net food benefit income does not exceed this standard, the household is determined eligible. The worker follows steps (A) through (H) of this paragraph to determine the household's net food benefit income.

(A) Add gross monthly income earned by all household members per (1) of this subsection including any net self-employment income, per procedures at OAC 340:50-7-30, to determine the household's total gross earned income.

(B) Subtract the appropriate earned income deduction, per DHS Appendix C-3 to determine the net monthly earned income. The household is not eligible for the earned income deduction on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions, per OAC 340:50-7-22.

(D) Subtract the standard deduction as shown in DHS Appendix C-3.

(E) Subtract medical expenses that exceed $35 for elderly or disabled household members only. The worker subtracts the $35 only once for the household rather than for each household member.

(F) Subtract monthly dependent care expenses. A dependent care deduction is not allowed when dependent care expenses are reimbursed or paid for under an E&T program or other source.

(G) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(H) Add together the allowable shelter expenses, including the appropriate utility standard, to determine the household's total shelter costs. Subtract from the total shelter costs 50 percent of the adjusted income, the household's monthly income after all of the deductions in (A) through (G) of this paragraph are subtracted. The remaining amount, if any, is the excess shelter costs.

(i) When there are no excess shelter costs, the net monthly income is determined.

(ii) When there are excess shelter costs, subtract excess shelter costs from the adjusted income to determine the net monthly income.

(c) **Food benefit allotment.**

(1) **Initial month proration.**

(A) Initial month means the first month the household is certified for food benefits following any period the household was not certified. Food benefit allotments for an initial month are prorated from the date of application.

(i) Migrant and seasonal farm worker's food benefits are not prorated when the household received food benefits in the prior month.

(ii) For the initial month, the worker considers the household's circumstances for the entire application month, even though the food benefit allotment is based on the day of the month the household applies for benefits.

(iii) ~~Per OAC 340:65-3-5(5),~~Temporary Assistance for Needy Families (TANF) cash assistance payments are also prorated from the application date, per OAC 340:65-3-5(5). When the worker certifies the household for TANF and food benefits for the same month, the worker uses DHS Appendix B, Prorated TANF and Food Benefit Payment, or the formula: (31 minus the application date) x monthly benefit divided by 30 to determine TANF countable income for the initial month.

(B) The prorated benefit is rounded down to the lower dollar. When the prorated food benefit is less than $10, the worker denies food benefits for the application month and certifies the household for the next month.

(C) When the worker certifies the household for the month following the month of initial application because the household failed to furnish necessary information, the worker:

(i) changes the application date to the date the household furnishes the information to DHS; and

(ii) prorates benefits from the new application date.

(2) **Monthly benefit.** The monthly benefit for all months except the initial month is the food benefit allotment listed on DHS Appendix C-3 for the appropriate household size and net income.

(d) **Certification periods.** Certification periods are established for each eligible household to receive benefits. When the certification period ends, the household must complete a new application, be interviewed, and provide required verification, per OAC 340:50-3-2 and 340:50-3-3, before the worker determines continuing eligibility. Under no circumstances are benefits continued beyond the end of a certification period without completion of a certification renewal.

(1) **Month of application.** The month of application is the first month in the certification period for initial applicants when eligibility is determined within the 30-day period.

(A) Because of anticipated changes, a household may be eligible for the application month but ineligible for the subsequent month. In this situation, the worker certifies the household for the application month only.

(B) When the worker determines a household is ineligible for the application month, but is eligible for subsequent months, a new application is not needed. The worker denies benefits for the application month and certifies food benefits effective the month following the application month.

(2) **Missed interview.** When a household misses the scheduled interview, the household may request a new interview date be scheduled through the 30th day following their application date. Refer to OAC 340:50-9-4 to determine the proration date of the food benefit allotment when applications are delayed.

(3) **Information furnished after the application is denied.** When the worker denies an application because the household did not provide the requested information and the applicant furnishes the required information to determine eligibility within the second 30-calendar day period, a new application is not required. The worker certifies food benefits using the date the household provides required information or verification as the application, certification, and proration date.

(e) **Length of certification periods.** The worker assigns the longest certification period possible based on the predictability of the household's circumstances.

(1) **One month.** The worker assigns a one-month certification to:

(A) households eligible only for the application month; and

(B) migrant farm worker households in the work stream, who apply before the 16th of the month.

(2) **Two months.** The worker assigns a two-month certification to:

(A) households eligible only for the certification month and subsequent month; and

(B) migrant farm worker households in the work stream, who apply after the 15th of the month.

(3) **Three or four months.** The worker assigns a three- or four-month certification period to households that include an able-bodied adult without dependents (ABAWD) member who is not meeting the work requirement or is not otherwise exempt, per OAC 340:50-5-100. This occurs when an ABAWD:

(A) is eligible to receive his or her initial three or four countable months of benefits; or

(B) regains eligibility for three-consecutive countable months and is not meeting work requirements.

(~~3~~4) **Twelve months.**

(A) The worker assigns a 12-month certification period to households at certification unless the household~~:~~

~~(i) includes an able-bodied adult without dependents member who is not meeting the work requirement or is not otherwise exempt. Refer to OAC 340:50-5-64 for participation time limits; or~~

~~(ii)~~ meets criteria in (1), (2), (3) or ~~(4)~~(5) of this subsection.

(B) These households are required to complete a mid-certification renewal at six-month intervals and are known as semi-annual reporting households.

(~~4~~5) **Twenty-four months.** The worker assigns a 24-month certification period to households when all adult members are elderly or disabled with no earned income. These households are required to complete a mid-certification renewal at 12-month intervals and are known as annual reporting households.

340:50-9-5. Changes after application and during the certification period

(a) **Change reporting requirements.** Section 273.12 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.12) contains change reporting requirements after application and during the certification period described in (a) through (i) of this Section.

(b) **Applicant households.** Applicant households must report all changes related to their food benefit eligibility and benefit amount. Households must report changes that occur after the interview but before the date of the notice of eligibility, within 10-calendar days of the date of the notice.

(c) **Annual reporting households.** Annual reporting households are households in which all adult members are elderly or disabled with no earned income.

(1) **Certification period.** A 24-month certification period is automatically assigned to annual reporting households. Annual reporting households must complete a mid-certification renewal between certification periods to report current household circumstances.

(2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report gross income changes when the household's income exceeds the maximum gross income scale for household size shown on Form 08MP006E, Information for Benefit Renewal, ~~by the 10th of the month following the month the change occurred~~within 10-calendar days of receipt of the first payment attributable to the change. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines.

(3) **Action taken on reported changes.** The worker must act on all changes reported by households.

(A) The computer system determines if the change results in an increase, decrease, or no change in benefits.

(B) Between the mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close benefits until the mid-certification renewal is due unless the:

(i) household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;

(ii) household requested benefit closure;

(iii) worker has information about the household's circumstances considered verified upon receipt per (g) of this Section; or

(iv) a household member is identified as a disqualified or ineligible person, per 7 C.F.R. §273.12(a)(5)(vi) and Oklahoma Administrative Code (OAC) 340:50-5-10.1.

(C) The computer system applies all changes that increase benefits. Before entering a change that increases benefits, verification supporting the change must be provided, when required.

(d) **Mid-certification renewal for annual reporting households.** Annual reporting households are sent notification in the 11th month of certification that the mid-certification renewal is due. The notice explains methods the household may choose to complete the renewal and required verification needed. An interview is not required.

(1) **When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the 12th month of certification.

(2) **Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.

(A) When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.

(i) When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the

mid-certification renewal without regard to the deduction.

(ii) When benefits are decreased, an advance notice is sent per the Oklahoma Department of Human Services (DHS) Appendix B-2, Deadlines for Case Actions.

(B) When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.

(C) When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.

(3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met per ~~(i)~~(j) of this Section.

(e) **Semi-annual reporting households.** Food benefit households are considered semi-annual reporting households unless they meet criteria per (b) or (g) of this Section.

(1) **Certification period.** A 12-month certification period is automatically assigned to semi-annual reporting households.

(2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report ~~by the 10th of the month following the month of the change occurring~~ when:

(A) the household's gross income exceeds the maximum gross income scale for household size shown on Form 08MP006E within 10-calendar days of receiving the first payment attributable to the change. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines; and

(B) a decrease in work hours below an average of 20 hours per week or 80 hours per month occurs for any household member meeting the able-bodied adults without dependents (ABAWD) work rules, per OAC 340:50-5-100 by the 10th of the following month.

(3) **Action taken on reported changes.** The worker must act on all changes reported by households.

(A) The computer system determines if the change results in an increase, decrease, or in no change in benefits.

(B) Between mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close food benefits until the mid-certification renewal is due unless:

(i) the household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;

(ii) the household requested benefit closure;

(iii) the worker has information about the household's circumstances considered verified upon receipt, per ~~(g)~~(h) of this Section;

(iv) an ABAWD must be removed from the food benefit household because he or she does not meet the ABAWD work rule, per OAC 340:50-5-100; ~~or~~

(v) a household member is identified as a disqualified or ineligible person, per 7 C.F.R. § .27312(a)(5)(vi) and OAC 340:50-5-10.1; or

(vi) a household member is identified as failing to meet work registration requirements, per OAC 340:50-5-85 through OAC 340:50-5-87.

(C) The computer system applies all changes that increase benefits. Before entering a change that increases benefits, verification supporting the change must be provided, when required.

(f) **Mid-certification renewal for semi-annual reporting households.** Semi-annual reporting households are sent notification in the fifth month of certification that the mid-certification renewal is due. An interview is not required.

(1) **When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the sixth month of certification.

(2) **Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.

(A) When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.

(i) When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the mid-certification renewal without regard to the deduction.

(ii) When benefits are decreased, the worker sends an advance notice, per DHS Appendix B-2, Deadlines for Case Actions, deadline dates.

(B) When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.

(C) When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.

(3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met per ~~(h)~~(i) of this Section.

(g) **Change reporting households.** Change reporting households are assigned a certification period other than 12 or 24 months. These households are required to report changes ~~by the 10th of the month following the month~~within 10-calendar days of when the change occurred.

(1) **Household characteristics.** Households not approved for a 12- or 24-month certification period include households approved for:

(A) expedited services for one or two months because the interview and/or verification ~~was~~were postponed, per OAC 340:50-3-2; and

(B) a three- or four-month certification period because the household includes one or more ABAWDs that do not meet the work rule, per OAC 340:50-5-100.

(2) **Required change reporting.** These households must report changes in:

(A) sources of income;

(B) unearned income of ~~$50~~$100 per month or more;

(C) earned income of more than $100 per month;

(D) household composition, such as an addition or loss of a household member;

(E) residence and shelter costs; ~~and~~

(F) the legal obligation to pay child support; and

(G) the work hours of an ABAWD subject to benefit time limits, per OAC 340:50-5-100 when they fall below 20 hours per week.

(3) **Action taken on case changes.** The worker must act on changes reported by the household within 10-calendar days of the date the household reported the change and provided necessary verification.

(A) When the household fails to report a change within the 10-calendar day period and, as a result, receives benefits to which it is not entitled, an overpayment claim is referred to Adult and Family Services (AFS) Benefit Integrity and Recovery, per OAC 340:50-15.

(B) When the worker fails to take timely action on a reported change and benefits are lost, the worker supplements the household's food benefits.

(4) **Changes that increase benefits.** When the household reports a change that increases benefits the household must verify the information before the worker makes the change. The worker gives the household 10-calendar days to verify the information.

(5) **Changes that decrease or close benefits.** When the household reports a change in household circumstances that decreases or closes food benefits, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, giving the household 10-calendar days to provide verification of the change. When the household provides required verification, the worker reduces or closes food benefits based on the verification provided. When the household does not provide required verification, the worker closes the food benefits based on the household's failure or refusal to provide verification.

(A) When a household's benefit decreases or closes, an advance notice of adverse action is required unless exempt from such notice for a reason listed in (i) or (ii) of this subparagraph. Per 7 C.F.R. § 273.13, advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. The household retains its right to a fair hearing and continuation of benefits when a fair hearing is requested within 10-calendar days of the change notice. An adverse action notice may be mailed just prior to the date the household receives or would have received benefits when the:

(i) ~~Oklahoma Department of Human Services (~~DHS~~)~~ receives a clear written statement signed by a responsible household member:

(I) stating the household no longer wishes to receive food benefits; or

(II) giving information that requires closure or reduction of food benefits and stating that the household understands the food benefit will be reduced or closed; or

(ii) worker closes or reduces food benefits per ~~(i)~~notice requirements at (k)(3)(A) of this Section.

(B) When an advance notice is required, the benefit decrease or closure is effective the next advance notice deadline date, per DHS Appendix B-2. When the household reports a change:

(i) 10-calendar days or more before the advance-notice deadline, per DHS Appendix B-2, the worker decreases or closes the food benefit effective the first of the following month; or

(ii) less than 10-calendar days before the advance-notice deadline, per DHS Appendix B-2, the worker must take action before the advance-notice deadline the following month.

(C) When a reported change increases food benefits, the worker makes the change by the non-advance-notice deadline date, per DHS Appendix B-2.

(h) **Changes considered verified upon receipt.** Verified upon receipt means the information is not questionable and the provider is the primary source of the information. For example, when DHS receives Social Security and Supplemental Security Income verification through data exchange with the Social Security Administration (SSA), it is considered verified upon receipt because SSA is the primary source. When the worker receives information considered verified upon receipt, he or she makes the change within 10-calendar days of notification using DHS Appendix B-2 deadline dates.

(i) **Required action on unclear information.** During the certification period, the worker may obtain unclear information about a household's circumstances that may affect the household's continued eligibility or benefit amounts. The worker may receive the unclear information from a third party, such as a data exchange discrepancy, an employer, or a person claiming knowledge of the household's circumstances. Unclear information is information that is not verified or is verified but the worker needs additional information before acting on the change.

(1) Per 7 C.F.R. § 273.12(c)(3)(i), when the worker receives unclear information in a non-report month for semi-annual or annual reporting households or any month for change reporters, he or she sends Form 08AD092E to the household, to inform it of required verification or actions. The household must clarify its circumstances within 10-calendar days only when the unclear information:

(A) significantly conflicts with the information used at the time of the certification, indicating the household may have failed to report eligibility information at application; or

(B) is fewer than 60-calendar days old, relative to the current participation month and when true, must be reported under the household's reporting responsibilities.

(2) When the household provides the requested verification in a non-report month, the worker determines whether to take action, per requirements at (c)(3) and (e)(3) of this Section.

(3) When the worker sends Form 08AD092E, per (i)(1)(A) or (B) of this Section, and the household does not respond or responds but refuses to provide sufficient information to clarify its circumstances, the worker closes the household's food benefits effective the next advance-notice deadline date, per DHS Appendix B-2;

(4) Per 7 C.F. R. § 273.12(c)(3)(iii), when the worker receives a data match that indicates a household member may have died or may be incarcerated for more than 30-calendar days, the worker sends Form 08AD092E to the household notifying it of the discrepancy and requesting information regarding the household member.

(A) When the household is a change reporting household and:

(i) fails to respond to Form 08AD092E or responds but refuses to provide sufficient information to clarify the person's household status, the worker closes the household's food benefits;

(ii) responds and verifies the person is not dead or incarcerated, no action is taken; or

(iii) responds and confirms the accuracy of the data exchange information, the worker removes the person from the food benefit and determines if an overpayment referral is needed, per OAC 340:50-15.

(B) When the household is an annual or semi-annual reporting household and:

(i) fails to respond to Form 08AD092E or responds but refuses to provide sufficient information to clarify the person's household status, the worker removes the person and his or her income from the household and adjusts the food benefits;

(ii) responds and verifies that the person did not die or is not incarcerated, no action is taken; or

(iii) responds and confirms the accuracy of the data exchange information, the worker removes the person and his or her income from the household, adjusts the food benefits, and determines if an overpayment referral is needed, per OAC 340:50-15.

(~~i~~j) **When benefits may be reopened following closure.** The food benefit may be reopened following closure using current eligibility information, when:

(1) DHS did not administer policy and procedures correctly. The food benefit is reopened effective the first day of the month of closure;

(2) the household fails to complete the mid-certification renewal timely, but provides all required verification by the first day of the month of closure. The food benefit is reopened effective the first day of the month of closure; or

(3) the household fails to complete the mid-certification renewal timely, but provides all required verification by the last day of the month of closure. The food benefit is reopened and prorated from the date the household completes the mid-certification renewal and provides all required verification.

(~~j~~k) **Notice requirements.** DHS is required to send a notice to the household when food benefits increase, reduce, or close.

(1) **Advance notice of adverse action required.** Prior to reducing or closing food benefits during the certification period, per 7 C.F.R. § 273.13, the worker must provide timely advance notice unless circumstances described in (k)(2) or (3) of this Section occur.

(A) Advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. Refer to DHS Appendix B-2~~, Deadlines for Case Actions,~~ for advance notice processing deadlines.

(B) When the household reports a change:

(i) 10-calendar days or more before the advance notice of adverse action deadline, the worker decreases or closes the food benefit effective the first of the following month. For example, when the household reports a change on May 18th, the effective date of the change is June 1st; or

(ii) less than 10-calendar days before the advance notice of adverse action deadline, per DHS Appendix B-2, the worker decreases or closes the food benefit effective the first of the month after the following month. For example, when the household reports a change on May 25th, the effective date of the change action is July 1st.

(2) **Notice requirement when benefits increase.** When a reported change increases food benefits, the worker makes the change by the non-advance notice deadline date, per DHS Appendix B-2. When the change is reported after the non- advance notice deadline, the worker supplements food benefits.

(3) **Advance notice of adverse action not required.** Advance notice of adverse action is not required for actions ~~(1)~~(A) through ~~(8)~~(H) of this ~~subsection~~paragraph, per 7 C.F.R. § 273.12(e) and 7 C.F.R. § 273.13(b).

(A) **Mass changes.** When DHS initiates mass changes because of changes or requirements in federal or state law, the computer system closes benefits by the non-advance-notice deadline, per DHS Appendix B-2. In these situations, the individual notification requirement is waived and AFS mails generic notices to the affected households informing them of the changes that are about to be made.

(B) **Deceased household members.** When the worker determines, based on reliable information, that all members of the household are deceased, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(C) **Moved out of state.** When the worker determines, based on reliable information, the household moved out of state, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(D) **Unfinished issuance certification.** When the unfinished issuance process is used at certification, the worker adjusts the benefit to take into account changes anticipated at the time of certification. The certification notice informs the household of all benefit changes included in this process.

(E) **Disqualified household member.** When the only household member is disqualified for an intentional program violation or fraud, per OAC 340:50-15-25, food benefits are closed by the non-advance-notice deadline, per DHS Appendix B-2. When there is more than one person in the household, the ~~benefits of the~~ remaining household ~~members~~members' benefits are reduced or closed because of ~~the disqualification of~~ that household ~~member~~member's disqualification by the non-advance-notice deadline, per DHS Appendix B-2.

(F) **Facility loses approval.** When a household's food benefit closes because the drug or alcohol treatment center or group home facility where the household resides is no longer approved, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(G) **Household provides written statement.** The worker closes or reduces benefits by the non-advance-notice deadline, per DHS Appendix B-2 when the household provides a written statement:

(i) stating the household no longer ~~wishes~~wants to receive food benefits; or

(ii) requesting closure or reduction in food benefits to avoid or repay an overpayment.

(H) **Case transfer.** When the worker closes food benefits in one case in order to transfer the food benefits to another case without a decrease or disruption in benefits, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(~~k~~l) **Action on changes when fair hearings are requested.** When a household requests a fair hearing within 10-calendar days of the date shown on ~~the~~an adverse action notice, ~~the household may continue to receive~~the worker must reopen or restore food benefits ~~at~~to the ~~same~~previous level pending the outcome of the hearing unless the household specifically waives continuation of benefits, per 7 § C.F.R. 273.15(k). Refer to OAC 340:2-5 for fair hearing procedures.

SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT)

340:50-10-1. Scope and applicability

~~Food~~Supplemental Nutrition Assistance Program (SNAP) food benefits are delivered by an on-line electronic benefit transfer (EBT) system where the benefits are stored in a central computer database and electronically accessed by eligible households at the point of sale via plastic ~~debit~~EBT cards, called Access Oklahoma, and personal identification numbers (PIN).

(1) Upon initial certification, households are issued a notice indicating an availability date ~~of~~to access ~~to~~ their benefits.

(2) Each month a client is approved for SNAP food benefits, the EBT system credits benefits to the client's food benefit account. The client uses the Access Oklahoma card and his or her PIN to purchase food from a business approved to accept food benefits, by the United States Department of Agriculture.

340:50-10-3. Initial issuance of Electronic Benefit Transfer (EBT) card

An Access Oklahoma electronic benefit transfer (EBT) card is issued to the payee of the eligible household.~~or to the designated~~ A second Access Oklahoma EBT card may be issued to an authorized representative designated in writing by the household. When a Supplemental Nutrition Assistance Program (SNAP) and Child Care Subsidy benefits are included in the same case, the household may choose a different authorized representative for each program. Refer to Oklahoma Administrative Code 340:50-3-1 for information regarding SNAP authorized representatives. The payee and authorized representative:

(1) ~~The~~obtain their initial EBT cards in the county office after viewing a training video and providing proof of their identity~~of the recipient is verified and he or she is permitted to select a personal identification number (PIN).~~; and

(2) ~~The~~select a personal identification number in the county office ~~provides training to recipients through the use of videos at the time of initial issuance of the card~~or by calling the number on the back of the EBT card.

(b) An EBT card is considered an initial card, when a:

(1) client applies for SNAP benefits for the first time;

(2) client is given a new case number;

(3) change in payee or authorized representative occurs; or

(4) payee or authorized representative makes a new application and never had an initial EBT card printed.

340:50-10-5. Replacement of lost, stolen, or destroyed Electronic Benefit Transfer (EBT) cards

~~The county office replaces~~When the client or authorized representative requests replacement of a lost, stolen, or destroyed Access Oklahoma electronic benefit transfer (EBT) card,~~within two business days following notice by the household~~ staff advises the person to phone the EBT contractor at 1-888-328-6551 or to go online at www.connectebt.com/ to cancel the current card and request a replacement.

(1) Local EBT specialists cannot issue initial or replacement EBT cards containing Supplemental Nutrition Assistance Program (SNAP) food benefits.

(2) The worker requests the Oklahoma Department of Human Services (DHS) Financial Services Electronic Payment Services (EPS) Unit assistance in issuing a replacement card, when:

(A) SNAP expedited services are approved for the month the replacement is requested;

(B) an EBT card was previously issued, but the applicant never received benefits or has not received SNAP food benefits for at least 24 months;

(C) an EBT card containing SNAP food benefits is returned to the county office because it is demagnetized or in an unusable condition;

(D) the EBT card contains food and child care benefits in application or open status; or

(E) the county director approves requesting EPS assistance because of special circumstances, such as when a homeless person uses the county office as a mailing address, when a treatment center client leaves the treatment center, or other limited circumstances.

(3) The EBT contractor mails replacement EBT cards by the next business day after the client requests a replacement card. Replacement cards take seven- to 10-calendar days to receive. EPS staff remotely print EBT cards to the local county office's embosser the date they receive replacement requests.

340:50-10-9. Expungement of benefits

The Oklahoma Department of Human Services ~~(OKDHS)~~ expunges Supplemental Nutrition Assistance Program (SNAP) food benefits that ~~have~~were not ~~been~~ accessed by the household after a period of one year.

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 1. HOUSEHOLDS ENTITLED TO EXPEDITED SERVICE

340:50-11-5. Procedures for expediting services

To expedite the certification process, the worker must verify the applicant's identity. All reasonable efforts to verify the household's residency, income declaration, how the household is meeting their needs when their expenses exceed income or ~~when~~ there is no income, and other factors of eligibility are made, per Section 273.2(i) of Title 7 of the Code of Federal Regulations. ~~Verification is done~~The worker verifies eligibility factors by seeing documentary evidence or through a collateral contact when documentary evidence is not readily available. ~~Verification of~~The worker may postpone verifying eligibility factors other than identity that could not be ~~made~~ verified~~during~~ within the seven-calendar day expedited service processing time ~~limits may be postponed~~limit. In most instances, it is expected that the applicant verify at least residence and income, within the time limit. Benefits cannot be delayed beyond the time limit solely because factors other than identity were not verified.

(1) ~~Except for the applicant, work registration of household members may be postponed when it cannot be accomplished within the expedited service processing time limit.~~

~~(2)~~ Households entitled to expedited service are asked to furnish a Social Security number for each person applying for benefits before the second full month of participation with the exception of newborns.

(~~3~~2) The worker certifies households who ~~have furnished~~furnish all necessary verification for determining continued eligibility for a normal certification period.

(3) ~~If~~Per Oklahoma Administrative Code 340:50-3-2, when the interview ~~or verification~~ is postponed, the worker provides the household with Form ~~08AD092E, Client Contact and Information Request~~08AD091E, Interview Notice, or Form 08AD093E, Support Center Interview Notice, setting an interview date and ~~listing needed verification that must be provided before further benefits are approved~~time as quickly as possible to ensure the interview can be completed by the last day of the expedited certification period.~~The interview must be completed and verification provided within 30 calendar days of the application date in order to avoid a break in benefits. When the interview is completed and postponed verification provided within 60 calendar days of the date of application, a new application is not needed. Benefits are prorated from the date the interview is completed and verification provided.~~When, after the interview, the household needs to provide verification, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, requesting the postponed verification. To avoid a break in benefits when the household is certified for one or two months, because:

(A) the interview was postponed, the interview must be completed by the last day of the expedited certification period. When the interview is not completed by the last day of the expedited certification period, the household must reapply for food benefits; or

(B) verification was postponed, the household must furnish the verification by the last day of the expedited certification period. When the household does not provide the verification by the last day of the expedited certification period, but does provide it within 60-calendar days of the application date, benefits are prorated from the date the verification is provided. The household must complete a new application in order to receive further benefits when the verification is not received within 60-calendar days of the application date.

(4) When the household completes the interview and provides postponed verification ~~is received~~timely, the worker approves the household, when eligible, for a normal certification period~~. This approval must be certified~~ within seven- calendar days of ~~the~~ receipt of the verification and completion of the interview.

(5) ~~If the household does not complete the interview or provide postponed verification within 60 calendar days of~~

~~the application date, the household must complete a new application in order to receive further food benefits.~~

~~(6)~~ There is no limit to the number of times a household can be certified ~~under~~ using expedited procedures, as long as prior to each expedited certification the household completes the interview requirement, ~~if~~when postponed, and provides the postponed verification from the last expedited certification.~~or was~~ When the household fails to complete the postponed interview or provide postponed verification, the household must be certified ~~under~~using normal processing standards,~~since the last~~ per Oklahoma Administrative Code 340:50-3-1 before the household is again eligible for an expedited certification.

PART 3. SIMPLIFIED SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SSNAP) FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND COMPANION STATE SUPPLEMENTAL PAYMENT (SSP) RECIPIENT(S)

340:50-11-20. Scope

(a) The Simplified Supplemental Nutrition Assistance Program (SSNAP) rules in this Subchapter are used when **ALL** food benefit household members are included in:

(1) Temporary Assistance for Needy Families (TANF) cash assistance; or

(2) TANF cash assistance and a companion State Supplemental Payment (SSP) case.

(b) SSNAP procedures do not apply when:

(1) no household member receives TANF cash assistance;

(2) all household members receive SSP; or

(3) any household member is a disqualified or ineligible food benefit household member,~~as described in OAC~~ per Oklahoma Administrative Code 340:50-5-10.1.

PART 5. RESTORATION OF LOST BENEFITS

340:50-11-46. Restoration of lost benefits

(a) **Worker responsibility.** A worker is responsible ~~to restore~~for restoring lost Supplemental Nutrition Assistance Program (SNAP) food benefits to the household when ~~the loss was caused by~~food benefits were lost because of an Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) error, per Section 273.17 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.17). ~~Benefits cannot be~~SNAP food benefits are restored ~~if they are lost more than~~for not more than 12 months prior to ~~the most recent of~~the:

(1) month the worker ~~was notified by~~receives a request to restore lost food benefits from the household~~, by another person, or an agency~~ in writing or ~~orally of the possible loss to the specific household~~verbally;

(2) month the worker ~~discovered~~is notified or discovers the loss occurred in the normal course of business~~that a loss to a specific household has occurred~~;

(3) date the household requested a fair hearing to contest the adverse action ~~which~~that resulted in the loss; or

(4) date the household initiated court action.

(b) ~~**Error discovered by human services center (HSC) staff.** If HSC staff determines that a loss of benefits has occurred and the loss was not caused by the household, the worker takes action to restore any benefits that were lost. No action by the household is necessary.~~

~~(c)~~ **Disputed benefits.**

(1) ~~If HSC staff~~When the worker determines a household is entitled to restoration of lost food benefits but the household does not agree with the amount to be restored, the household may request a fair hearing. ~~If~~ When the household requests a fair hearing~~is~~:

(A) ~~requested~~ prior to or ~~during~~at the time lost food benefits are ~~being~~ restored, the amount restored to the household ~~receives the lost benefits as~~is the amount determined by the worker pending results of the fair hearing; and

(B) ~~favorable to the household,~~ the worker restores the lost food benefits in accordance with ~~that~~ the fair hearing decision, when the decision is favorable to the household.

(2) ~~If~~When the household ~~believes~~notifies the worker that it is entitled to restoration of lost benefits and the worker, after reviewing the case ~~file the HSC staff~~record does not agree, the household has 90-calendar days from the date ~~of the HSC~~the worker notifies the household of his or her decision to request a fair hearing. The ~~HSC~~worker restores lost benefits to the household only ~~if~~when the fair hearing decision is favorable to the household.

(~~d~~c) **Computing amount to be restored.** After correcting the loss for future months and excluding the months ~~for which~~ benefits may have been lost prior to the 12-month time limit, the worker calculates the amount to be restored. The worker computes lost food benefits beginning with the month the loss initially occurred and ending with the first month the error is corrected or the first month the household is determined to be ineligible.

(1) ~~If the loss resulted in~~When the household was determined eligible, but received an incorrect food benefit allotment~~but the household was determined eligible~~, the worker calculates the lost food benefits ~~loss of benefits is calculated~~ only for ~~those~~the months the household participated in SNAP.

(2) ~~If the loss was caused by incorrect delay, denial, or termination of benefits, the months affected by the loss are calculated according to subparagraphs (A) or (B) of this paragraph.~~

~~(A)~~ ~~If~~When an eligible household's application was erroneously denied, the month the loss initially occurred is the application month~~of application, or, for an eligible household filing a timely reapplication,~~. For a timely filed certification renewal, the initial loss occurs the month following the expiration of its certification period.

(3) When an eligible household's application is delayed, the worker calculates lost food benefits, per Oklahoma Administrative Code 340:50-9-4.

(~~B~~4) ~~If~~When a household's benefits were ~~erroneously terminated~~incorrectly closed, the month the loss initially occurred is the first month benefits were not received ~~as a result~~because of the ~~erroneous action~~ incorrect closure.

~~(3) Lost benefits are computed beginning with the month the loss initially occurred and ending either the first month the error is corrected or the first month the household is found ineligible.~~

(5) When there is not enough information in the household's case record to determine the correct benefit amount, the worker requests information from the household to determine eligibility for those months. When the household cannot provide the information needed to determine eligibility, the household is considered ineligible for the lost food benefits.

(~~e~~d) **Offsetting claims.** ~~If~~When the household has an unpaid overpayment or an overpayment held in suspense, the amount to be restored is offset against the overpayment amount~~of the overpayment~~. The balance, if any, is restored to the household. Benefits received at initial certification or because of retroactive certification are not used to offset claims against a household.

(~~f~~e) **Lost benefits to persons disqualified for ~~willful misrepresentation~~an intentional program violation (IPV).** ~~A person disqualified for willful misrepresentation is entitled to restoration of any benefits~~The worker restores lost ~~during the~~food benefits for months the person was disqualified for an IPV only ~~if~~when the disqualification decision ~~which resulted in disqualification~~ is subsequently overturned or reversed,per 7 C.F.R. § 273.17(e). A person is not entitled to restoration of lost benefits for the disqualification period ~~of disqualification~~ based solely on the fact that a criminal conviction could not be obtained, unless the person successfully challenged the disqualification in a separate court action.

(1) For each month the person was disqualified, the amount to be restored, if any, is ~~determined by comparing~~ the difference between the food benefit allotment the household received ~~with~~and the food benefit allotment the household would have received ~~had~~if the disqualified member ~~been~~was allowed to participate in SNAP.

(2) The ~~disqualification~~lost benefit restoration period cannot exceed 12 months prior to the date ~~OKDHS~~ DHS was notified ~~of lost benefits~~or discovered a loss occurred.

~~(3) If the household received a smaller allotment than it should have received, lost benefits is the difference between the amount the household was entitled to receive and what they actually received.~~

(~~g~~f) **Method of restoration.** ~~Whether the household is currently eligible or ineligible, the~~The worker restores benefits equal to the amount of benefits that were lost even when the household is not currently eligible for food benefits. The amount ~~of restoration is~~ issued is in addition to the food benefit allotment currently eligible households are entitled to receive.

PART 9. DISASTER PROCEDURES AND REPORTING REQUIREMENTS

340:50-11-86. Emergency food benefit assistance in disasters declared by Food and Nutrition Service (FNS)

The Oklahoma Department of Human Services ~~(OKDHS)~~ is responsible for operating a Disaster Supplemental Nutrition Assistance Program (DSNAP). ~~Food and Consumer Service Handbook 320 is used as the basic guidelines for operating a DSNAP.~~

(1) When a major or lesser disaster is declared by Food and Nutrition Services (FNS), ~~those~~Adult and Family Services (AFS) Supplemental Nutrition Assistance Program staff notifies the counties involved ~~are notified by the Family Support Services Division (FSSD) Supplemental Nutrition Assistance Program (SNAP) Section staff~~ in the disaster~~. At that time the FSSD SNAP Section staff~~ and issues policy and procedures to be followed.

(2) Maximum income limits, benefit allotments, and application procedures are followed for FNS declared disasters. Emergency benefit allotments are equal to the ~~value of the food actually lost in the disaster but are not greater than the applicable~~ maximum monthly food benefit allotment for the household size.

(3) Once benefits are issued they must be used no later than 90-calendar days from certification. Benefits not used within 90-calendar days of certification are expunged and cannot be put back into the client's account.

SUBCHAPTER 13. FAIR HEARINGS AND QUALITY CONTROL

340:50-13-2. Hearing based on any action relating to a food benefit or case

(a) **Client rights.** Every applicant and participating household has the right to appeal any action ~~relating to their food benefit application or case~~that affects the household's participation in the Supplemental Nutrition Assistance Program (SNAP), per Section 273.15(a) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.15(a)). Applicants and recipients are advised ~~orally as well as~~verbally and in writing of their right to a fair hearing and of the procedures for appealing any decision.

(b) **Hearing request.** ~~Every applicant and participating household who believes proper consideration has not been given to the circumstances surrounding their situation may request a hearing. This~~A hearing request may be made ~~orally~~verbally or in writing.

(1) When the ~~aggrieved~~ client ~~chooses~~contacts the county office to ~~orally~~ request a fair hearing~~instead of making a written request~~, the client is given an opportunity to review the situation with a supervisory or administrative staff member in the local county office. ~~If~~When the situation is not resolved in the review or the ~~aggrieved~~ client does not wish to review the situation with

local supervisory or administrative staff, ~~a memorandum is prepared summarizing the client's reason(s) for requesting a fair hearing and the identifying portion of~~the worker explains hearing procedures to the client, completes the first page of Form 13MP001E, Request for a Fair Hearing, ~~is completed~~and gives or mails the form to the client to complete the rest of the form.

(2) Households ~~wishing~~wanting to contest a denial of expedited service must be given an opportunity to have an Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) conference scheduled within two-~~working~~ business days unless the household requests it be scheduled later or states it does not wish to have ~~an OKDHS~~a DHS conference, per 7 C.F.R. § 273.15(d). ~~The conference is handled in accordance with procedures in OAC 340:2-5-61.~~ A fair hearing must be held if the issue is not resolved or the household does not withdraw its request for a fair hearing by signing Form 13MP004E, Withdrawal of Request for Hearing.

(3) When a fair hearing is requested by a household that plans to move to another state before a hearing decision would normally be reached, such as a migrant farmworker household, DHS expedites processing the hearing before the household plans to leave the state, per 7 C.F.R. § 273,15(i) and Oklahoma Administrative Code (OAC) 340:2-5-65.

(c) **Participation during appeal.** When a household requests a fair hearing during the ~~ten day~~10-calendar day advance notice period, the ~~household can choose to continue participation on the basis of the household's situation~~ household's food benefits are continued at the same level as authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits, per 7 C.F.R. § 273.15(k). ~~The continuation of benefits can only occur if~~Benefits are not continued when the certification period ~~has not expired~~expires prior to the fair hearing request.

(1) ~~If the appeal is not sustained,~~When the household chooses:

(A) to continue food benefits at the previous level until the hearing decision is reached and the hearing decision is not in the household's favor, the ~~client~~household is required to reimburse the ~~benefits~~ineligibly received ~~ineligibly. If the household chooses~~benefits; and

(B) not to continue ~~participation on the basis immediately prior to the notice of adverse action~~food benefits at the previous level until the hearing decision is reached and the ~~appeal is sustained~~ hearing decision is in the household's favor, the household is entitled to the retroactive benefits lost during the appeal period.

(~~1~~2) When the household fails to request continuation of benefits within the advance notice period and later establishes there was good cause for the failure, the worker reinstates the benefits to the prior basis.

(~~2~~3) When benefits are reduced or ~~terminated as a result of~~closed because of a mass change without individual notice of adverse action, per OAC 340:50-9-5(k)(3)(A), ~~OKDHS, upon request of the household, reinstates~~the worker only reinstates benefits ~~if~~to the previous level when the issue being appealed is that eligibility or benefits were improperly computed or federal law or regulation is being misapplied or misinterpreted by DHS.

(~~3~~4) When a household requests a hearing and continuation of benefits as a result of an action taken by ~~OKDHS~~DHS at initial certification or on a subsequent application, benefits are not reinstated or continued except as authorized at such initial or subsequent certification.

(d) **Reduction or ~~termination~~closure prior to hearing decision.** Once continued, benefits are not reduced or ~~terminated~~closed prior to a hearing decision ~~except under the circumstances in (1) and (2) of this subsection~~unless~~.~~:

(1) ~~**Change in circumstances while hearing is pending.**~~ the certification period expires. When this occurs, the household may reapply and be determined eligible for a new certification period and benefit amount as determined by DHS;

(2) the hearing officer makes a preliminary decision, in writing and at the hearing, that the sole issue is one of federal law or regulation and that the household's claim that DHS improperly computed benefits or misinterpreted or misapplied the federal law or regulation is invalid;

(3) ~~If~~ a change in circumstances~~, other than the issue being appealed,~~ occurs that affects the household's eligibility or basis of issuance while the hearing decision is pending ~~which affects the household's eligibility or basis of issuance~~ and the household does not request an additional hearing and continuation of benefits after the notice of adverse action~~, such action is initiated by the worker~~. The benefit allotment must be based on any income the household had prior to the first notice of adverse action~~.~~; or

~~(2) **Notification to household.** The head of the household is mailed written notice of the decision of the Appeals Committee per OAC 340:2-5-76 and is apprised of the reason for the decision. At the same time, the head of the household is advised of any further right to appeal.~~

(4) the household or its authorized representative verbally withdraws the fair hearing request and does not inform DHS of its desire to reinstate the fair hearing within 10-calendar days of receiving written notice from DHS confirming the withdrawal request.

(e) **Hearing decision.** ~~Decisions of~~Hearing decisions are made by the Appeals Committee~~, may not run counter to federal law, regulation, or policy~~ per OAC 340:2-5-76.

(1) The hearing is conducted, a decision is reached, and the household and ~~human services center~~county office are notified of the decision within 60-calendar days of receipt of the fair hearing request per 7 C.F.R. § 273.15(c). The notice also informs the household of any further appeal rights.

(2) ~~A decision which~~When the decision is:

(A) in the household's favor and results in an increase in household benefits, the benefit increase is reflected in the household's electronic benefit transfer account within ~~ten~~10-calendar days of ~~the~~ receipt of the hearing decision unless the hearing decision

effective date corresponds with the next benefit issuance date~~.~~; or

(B) not in the household's favor and results in a benefit decrease, the worker decreases the household's food benefits effective the next scheduled benefit issuance date.

[OAR Docket #19-630; filed 6-17-19]

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

[OAR Docket #19-631]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
340:65-1-2 [AMENDED]
Subchapter 3. Eligibility for Benefits
340:65-3-2 [AMENDED]
340:65-3-6 [AMENDED]
(Reference WF 19-65)
AUTHORITY:
Director of Human Services; and Sections 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162), Sections 6103 and 7213 of Title 26 of the United States Code, and IRS Publication 1075.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed amendments to Chapter 65, Subchapter 1 amend the rules to: (1) clarify county director or field manager responsibilities for safeguarding client case information; (2) reorder information regarding safeguarding of federal tax information (FTI); (3) add specifics regarding the FTI that must be safeguarded; (4) restrict access to FTI only to designated Adult and Family Services (AFS) FTI specialists who complete a security background investigation; (5) add steps that must be included in the background investigation; (6) define what could cause an employee to lose access to FTI and the penalties for improperly disclosing FTI; (7) clarify and simplify language regarding when AFS may release information to the client and other government entities; and (8) update terminology and legal and policy citations.

The proposed amendments to Chapter 65, Subchapter 3 amend the rules to: (1) update: (a) the definition for the Child Care Subsidy application date; (b) the OKDHSLIVE phone number; (c) how a recipient sets up direct deposit and transfers funds into a bank account; (d) the procedure used by the contractor when funds cannot be transferred to direct deposit because the recipient provided incorrect banking information; and (e) terminology; and (2) add information regarding companion debit cards and ways the recipient may transfer funds to a companion debit card.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

340:65-1-2. Confidential nature of case material

(a) **Legal basis.** The Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) maintains the confidentiality of all applications, information, and records concerning any applicant or recipient~~, in accordance with~~ per the Oklahoma Social Security Act located in Sections 161-260 of Title 56 of the Oklahoma Statutes~~,~~ and the Federal Social Security Act~~, and Section 183 of Title 56 of the Oklahoma State Statutes~~.

(b) **Custody of records.** All case information including electronic data procured by, or available to, any ~~staff member of OKDHS~~DHS employee is the property of ~~OKDHS~~DHS and is used ~~by staff~~ only in accordance with the provisions of the law and ~~the~~DHS rules~~adopted by OKDHS~~.

(1) **Authority to disclose information.** The county director is responsible for the custody of records in the ~~human services center (HSC)~~county office and for their proper use. All requests for information from ~~an OKDHS~~a DHS record are referred to the county director, except ~~in those instances where~~when the request originates within ~~OKDHS~~DHS in carrying out its regular functions. ~~Staff members~~Employees of each ~~of the OKDHS operating divisions have access to records of the other divisions so that a mutual~~DHS division may exchange ~~of~~necessary information~~, on~~ when working with the same family or a related ~~to a~~ case ~~under care, may be constructive~~to provide benefits and services.

(2) **Safeguarding of case information.** Case information must be safeguarded~~, in accordance with~~ per Oklahoma Administrative Code (OAC) 340:1-1-20, ~~OKDHS~~DHS:2-41-15, ~~OKDHS~~DHS:2-45, ~~OKDHS:115-3-2~~DHS:65-3-6, and as provided in this subsection.

(A) The county director or ~~delegated~~field manager is:

(i) the custodian of client records ~~is responsible for ensuring compliance with the applicable rules when the records are~~assigned to and, located in a ~~HSC~~county office or ~~any~~support center or processed at an alternate work location~~.~~; and

(ii) responsible for:

(I) taking reasonable precautions to ensure the confidentiality and proper use of client case information; and

(II) ensuring employees know DHS rules regarding safeguarding of client case information and when and to whom information may be released.

(B) ~~Alternate~~Per DHS:2-1-301, alternate work locations ~~as defined in OKDHS:2-1-301~~ must ~~have the capacity for~~be capable of safeguarding case information. ~~If~~When an alternate work location ~~cannot~~does not meet safeguarding standards, case information ~~cannot~~must not be received, stored, or processed at that location.

(~~A~~C) Practices for safeguarding information include:

(i) secure physical storage of records in locked buildings, rooms, and containers;

(ii) secure storage and care of ~~OKDHS~~DHS-owned electronic equipment;

(iii) controlled or restricted access to areas containing case information;

(iv) case information:

(I) must be secured in a storage area when an employee is not present, such as in a desk or file cabinet;

(II) may not be stored on any electronic device or storage media that is not the property of ~~OKDHS~~DHS; and

(III) may not be ~~sent~~emailed outside of the agency ~~via e-mail~~ unless it is encrypted; and

(v) ~~raw tax data which includes any written, typed, photocopied, or printout of information from the Income Eligibility Verification System Internal Revenue Service (IEVS IRS), Beneficiary and Earnings Data Exchange System (BENDEX), and Beneficiary Earnings Exchange Record (BEER):~~

~~(I) must be secured in a storage area, such as a locked desk or file cabinet;~~

~~(II) may not be viewed or stored on any electronic device that is not the property of OKDHS or the State of Oklahoma;~~

~~(III) may not be printed or maintained in a non-electronic format;~~

~~(IV) may not be sent via e-mail; and~~

~~(V) may not be transmitted via fax; and~~

~~(vi)~~ reasonable privacy or restricted viewing of electronic data visible on computer screens or mobile devices.

(~~B~~D) Information ~~which~~that must be safeguarded includes:

(i) names and addresses, including lists;

(ii) information contained in an application;

(iii) reports of investigations;

(iv) medical data ~~which includes~~including, but ~~is~~ not limited to, diagnosis and past history of disease and disability;

(v) correspondence and other records concerning the condition or circumstances of any person from whom or about whom information is obtained, regardless of whether it is recorded;

(vi) evaluations of such information;

(vii) warrant registers; and

(viii) all data items available on computer screens. Disclosure to any unauthorized person is a violation of federal and state ~~agency~~ regulations. Persons considered to be authorized are:

(I) the client;

(II) the client's authorized representative;

(III) ~~OKDHS staff~~DHS employees;

(IV) authorized volunteers; and

(V) ~~staff~~employees of outside agencies with a contract or agreement allowing access to specific data~~; and~~

~~(ix) raw tax data may include:~~

~~(I) the client's name;~~

~~(II) Social Security number;~~

~~(III) Internal Revenue Service (IRS) reporting firm, company, political subdivision;~~

~~(IV) state agency account number;~~

~~(V) type of income; and~~

~~(VI) the amount of income or resource~~.

(3) **Safeguarding of federal tax information (FTI).** Per Section 6103 of Title 26 of the United States Code (26 U.S.C. § 6103), DHS must safeguard and restrict access to FTI only to persons whose duties or responsibilities require access.

(A) FTI information that must be safeguarded includes:

(i) the client's name;

(ii) the client's Social Security number;

(iii) Internal Revenue Service (IRS) reporting firm, company, and political subdivision;

(iv) state agency account number;

(v) type of income; and

(vi) the amount of income or resources.

(B) Adult and Family Services (AFS) restricts access to FTI to designated AFS FTI specialists who complete a favorably adjudicated suitability or security background investigation prior to handling FTI and annually thereafter. At a minimum, the background investigation must be at a tier-two level as designated by federal investigative standards and include:

(i) the results of a Federal Bureau of Investigation (FBI) fingerprint check using Form FD-258, FBI Applicant Fingerprint Card, from the state identification bureau. In Oklahoma, the Criminal Identification Section of the Oklahoma State Bureau of Investigation is the agency authorized to conduct FBI fingerprinting. The fingerprint results check the employee's criminal history in all 50 states;

(ii) a check of local law enforcement agencies where the employee lived, worked, and/or attended school within the last five years to identify trends

of misbehavior and, when applicable, of the appropriate agency for any identified arrests; and

(iii) validation of the employee's identity and eligibility to legally work in the United States (U.S.). New employees must complete the U.S. Citizenship and Immigration Services Form I-9, Employment Eligibility Verification, and within three days of completing the form, be processed through E-Verify to assist with verifying the employee's employment status and the documents provided with Form I-9.

(C) Practices for safeguarding information include:

(i) securing FTI, such as any written, typed, photocopied, or printout of information from the Income Eligibility Verification System-Internal Revenue Service (IEVS-IRS), Beneficiary and Earnings Data Exchange System (BENDEX), and Beneficiary Earnings Exchange Record (BEER) in a storage area, such as a locked desk or file cabinet;

(ii) not viewing or storing FTI on any electronic device that is not DHS or the State of Oklahoma property;

(iii) not printing or maintaining FTI in a non-electronic format;

(iv) not emailing FTI; and

(v) not faxing FTI.

(D) Disclosure of FTI in violation of the guidelines specified in IRS Publication 1075 is considered a felony punishable by a fine in any amount not exceeding $5,000 or imprisonment of not more than five years, or both, together with the prosecution costs. Further, an AFS FTI specialist may lose access to FTI and be subject to disciplinary action, per DHS:2-1-7 when he or she:

(i) does not properly safeguard FTI;

(ii) does not complete or pass the annual favorably adjudicated suitability or security background investigation; or

(iii) releases FTI to an unauthorized person(s), per 26 U.S.C. § 7213.

(~~3~~4) **Nature of information to be made available.** General information not identified with any particular person or group of persons, such as total expenditures made, number of recipients, and other statistical information and social data contained in reports or surveys do not fall within the type of material to be safeguarded.

(A) Requested information is released to representatives of agencies ~~which~~that are authorized~~,~~ by law~~,~~ to have the information. Information may be released to other agencies only when they give assurance that the:

(i) confidential character of the information will be preserved;

(ii) information will be used only for purposes related to the administration of the assistance program and the functioning of the inquiring agency; and

(iii) protection standards ~~of protection~~ established by the agency to which information is disclosed are equal to those established by ~~OKDHS~~DHS, both in regard to the use of the information by ~~the staff~~employees and the provision of protective procedures.

(B) ~~Addresses of clients can~~Client addresses may be disclosed to federal, state, and local law enforcement officers who furnish the client's name, Social Security number, and notify ~~OKDHS~~ DHS that the location or apprehension of the client is within their official duties and that the client is:

(i) a fugitive felon who is fleeing to avoid prosecution, custody, or confinement after conviction; or

(ii) violating a condition of probation or parole.

(C) The days and hours a child is approved for the Child Care Subsidy Program ~~can~~may be disclosed to a child care provider.

(D) Upon written request, information used to establish eligibility that is not otherwise protected by law is made available to the client or the client's representative during normal business hours. Confidential information, including the names of persons who have disclosed information about the client without the client's knowledge and the nature or status of pending criminal prosecutions is withheld.

(E) Information obtained by the ~~worker~~employee from collateral sources, other than public records or the ~~worker's~~ employee's written evaluation of the client's situation, ~~cannot~~must not be made available to the client or to any other person without the consent of the person who gave the information.

(F) Prior to a fair hearing, ~~HSC staff~~the designated county or support center employee is responsible for ~~supplying~~providing the client with a copy of the ~~written~~completed hearing summary~~,~~ and documents~~, and~~ or other records ~~which HSC staff~~the employee plans to present at the hearing~~per OAC 340:2-5-69~~. ~~[OAC 340:2-5]~~

(~~4~~5) **Release of information at client request~~of client~~.** ~~If the client or~~Upon the client's~~,representative requests OKDHS make available to him, her~~ or the client representative's, written request, DHS may release information provided to DHS by the client to the client or to other persons, courts, or agencies~~, certain information which he or she has given OKDHS regarding himself or herself, it is proper to do so, provided~~ when the written release ~~is to~~designates the ~~designated~~ person and the material ~~is related to the specific subject involved~~to be made available.

(A) ~~A~~When a DHS employee receives a written inquiry requesting client information from an interested person, accompanied by the client's written permission, ~~is considered sufficient to identify the person as the authorized representative of the client and information~~the employee may ~~be furnished~~furnish the information.

(B) ~~If a letter of~~When the written inquiry does not conclusively show that the person ~~making inquiry has been~~was asked to obtain ~~such~~the information ~~in~~on the client's behalf~~of the client~~, ~~no action is taken without ascertaining~~ the employee determines the client's wishes ~~in the matter~~ before releasing the information.

(~~5~~6) **Release of information to courts.** ~~Information~~DHS employees may only release case information about the client ~~in his or her record is made available~~ in court proceedings ~~only~~ upon subpoena, except upon request by court officials in cases of abandonment and desertion, neglect of children, or restitution when such cases ~~have been~~were referred to the court by ~~OKDHS~~DHS. In these ~~situation OKDHS staff~~ situations, DHS employees' testimony is limited to material affecting the administration of the public assistance law except when participating in a case requested by the client or the client's representative in which his or her personal interests are at stake.

(A) When ~~an~~a DHS employee ~~of OKDHS~~ is subpoenaed by the court for the purpose of giving testimony based upon ~~OKDHS~~DHS records, the county director confers with ~~the district attorney (DA)~~DHS Legal Services (LS) regarding recognition by the court of the right of ~~OKDHS~~DHS under the law to protect its records, and of the confidential character of information made available to ~~OKDHS~~DHS in the process of administering assistance.

(B) ~~If~~When there is reason to believe that the court will not respect the confidential character of ~~OKDHS~~DHS records, the county director communicates immediately with ~~the Legal Division~~ DHS LS regarding the steps to be taken.

(~~6~~7) **Release of information to the DA.** ~~Information is released~~DHS employees may release information to the DA~~,~~ as necessary, to carry out ~~OKDHS~~DHS policy regarding child support pursuit from ~~an absent~~a non-custodial parent. ~~In every instance, the relative making application for~~When child support pursuit is required in order for a client to receive benefits, such as Temporary Assistance for Needy Families (TANF), ~~is informed~~Child Care Subsidy or SoonerCare (Medicaid), AFS employees inform the client of ~~the~~this requirement~~for obtaining support from an absent parent~~.

(~~7~~8) **Release of medical information.** Medical information paid for by ~~OKDHS~~DHS is not released, even at the request of the person to whom it pertains, except to another agency to which the person ~~has~~ applied for services with the objective to protect or advance the person's welfare. There is nothing in Oklahoma law or federal law to prevent a physician from releasing medical information to his or her patient or ~~an~~a patient's authorized representative~~of the patient~~. The physician, in such instances, is governed by the physician-patient relationship.

(A) ~~The OKDHS Legal Division~~DHS LS is responsible for determining ~~whether~~if the ~~particular~~ requested medical information ~~being requested~~ may be released under federal regulations and ~~OKDHS policies~~DHS rules. ~~When such clearance has been made, the Legal Division notifies FSSD. FSSD contacts HSC staff regarding the action to take.~~

(B) ~~Medical~~AFS employees do not release information ~~that HSC staff has~~ obtained from the Veterans Administration or from the Social Security Administration ~~cannot be released~~ to anyone outside ~~OKDHS~~of DHS.

(C) When a client requests a fair hearing on a medical decision, all medical records or reports considered in establishing a medical decision are provided to the client or the client's authorized representative at a reasonable time before the hearing except for psychological and psychiatric records~~, which were considered in establishing the medical decision, are provided to the client or authorized representative at a reasonable time before the date of the hearing~~. Copies of psychological and psychiatric records are ~~not made available unless the release of these records is consented to by~~only released with the consent of the treating physician or practitioner or ~~are~~when ordered released by a court of competent jurisdiction upon a finding that it is in the best interest of a patient.

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-2. Definitions

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

"Applicant" means a person who directly~~,~~ or through a person acting responsibly on the applicant's behalf, requests a formal eligibility determination for one or more programs administered by Oklahoma Department of Human Services (DHS) Adult and Family Services (AFS).

"Application process" means the process by which the applicant requests benefits, completes program requirements, and provides necessary proof, and the worker determines eligibility. Any person who fraudulently represents facts, acts without authority, or exceeds his or her authority to perform a transaction may be prosecuted under all applicable criminal and civil laws.

"Client" means a person applying for or receiving services, cash assistance, or other benefits.

"Date of application" means~~, for~~:

(A) the Child Care Subsidy ~~applications,~~ Program does not define the application date, per Oklahoma Administrative Code (OAC) 340:40-3-1.

(i) "Request date" is defined as the date the applicant requests subsidized child care benefits verbally or in writing.

(ii) "Certification date" is defined as the date the applicant or ~~a person acting on~~ the applicant's ~~behalf~~authorized representative completes the child care interview and provides all necessary verification to the county office, including the name of the child care provider the ~~applicant wants~~the client chooses to use.

(B) For Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) food benefits, SoonerCare (Medicaid), State Supplemental Payment (SSP), and the Low Income Home Energy Assistance Program (LIHEAP), the application date is the date the applicant or a person acting on the applicant's behalf signs the application.

(i) When the application is initiated outside of DHS, the application date is the date the application is stamped in the ~~local~~ county office or received electronically through okdhslive.org.

(ii) Receipt of Form 08MA005E, Notification of Needed Medical Services, preserves the date of application for SoonerCare (Medicaid) eligibility groups for which DHS is responsible for determining eligibility, per ~~Oklahoma Administrative Code (~~OAC~~)~~ 317:35-5-63.

(C) When DHS staff receives a verbal request prior to the signature date on the application, staff enters the verbal request date in red above the signature date. The verbal request date is the application date for TANF, SSP, and SoonerCare (Medicaid) eligibility groups for which DHS determines eligibility.

(i) Per OAC 340:50-3-1, a verbal request for food benefits does not preserve the application date unless the applicant ~~advises~~informs staff a hardship exists that prevents him or her from signing a request on that date. A hardship may exist when the applicant states no one can come to the local county office because of a situation beyond the applicant's control, such as illness, disability, or lack of transportation; and the applicant is unable to file the application ~~electronically~~online at www.okdhslive.org or ~~call 1-877-653-4798~~by phone at 405-487-5483 to file~~by telephone~~.

(ii) A verbal request for LIHEAP does not preserve the application date as funding for the program is limited.

(iii) The verbal request date preserves the application date only when the applicant signs the application within 30-calendar days.

(I) When the applicant fails to sign the application within 30-calendar days, no application request is considered made.

(II) When the applicant subsequently contacts DHS after 30-calendar days and completes the application process, the application date is the date the applicant completes and signs the application.

(D) When the applicant comes to the ~~local~~ county office to request benefits and cannot stay to complete the application with a worker or no appointment times are available that day, the applicant must submit a completed and signed Form 08MP001E, Request for Benefits, to preserve the application date. When the applicant does not leave a completed and signed Form 08MP001E, an application date is not preserved and an appointment for an interview is not set.

"Inquiry" means a request for information but does not imply a request for assistance.

"Payee" means the person in the household in whose name benefits are issued. The person considered the payee varies depending on the requested programs. The payee may or may not be included in the benefit.

(A) For the Child Care Subsidy Program, the payee must be the person responsible for the child for whom benefits are requested. The payee is not required to be related to the child. When the parent of the child is in the home, the parent must be the payee, per OAC 340:40-3-1(a)(2).

(B) For the TANF Program, the payee must have a certain degree of relationship to the child for whom benefits are requested, per OAC 340:10-3-56 and 340:10-9-1.

(C) For SNAP, the payee may be any responsible adult living in the home, per OAC 340:50-3-1.

(D) For the SoonerCare (Medicaid) Program, the payee is the person for whom benefits are requested or the person responsible for the minor child for whom benefits are requested. The payee is not required to be related to the child. When the parent of the child is in the home, the parent must be the payee.

(E) For the SSP Program, the payee is the person for whom benefits are requested. When the person for whom benefits ~~is~~are requested is a minor child, the child is coded as a payee with a guardian.

(F) For LIHEAP, the payee may be any responsible adult living in the home. When the household receives other benefits, the payee is the same person shown as payee for the other benefits.

"Recipient" means a person who receives services, cash assistance, or other benefits.

340:65-3-6. Cash assistance payment procedures

(a) **Payment method choices.** The Oklahoma Department of Human Services (DHS) issues cash assistance benefits through a contractor on a debit card or by direct deposit. DHS initially issues the benefit on a debit card.

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

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

(b) **Debit card procedures.** Debit card procedures are listed in (1) through (6) of this subsection.

(1) Unless the applicant was previously issued a debit card, it is issued to the applicant after the application is placed in application status or after benefits are approved.

(A) A debit card issues after the application is placed in application status when the applicant was previously issued a client number. DHS assigns a client number to a person after he or she is approved for a DHS benefit or when the person has an open child support case with DHS Child Support Services (CSS).

(B) When the applicant does not have a client number, the debit card issues after the worker certifies the Temporary Assistance for Needy Families (TANF) or State Supplemental Payment (SSP) benefit.

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

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

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

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

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

(C) free services, including two free ATM withdrawals per calendar month from MoneyPass ATMs, and fees;

(D) how to request a companion cardholder or switch to direct deposit; and

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

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

(5) The recipient may request one or more companion cards. The companion card(s) may only be ordered online.

(A) The companion card is sent to the recipient's address.

(B) Once the companion cardholder receives the companion card, he or she must call the customer service phone number located on the back of the debit card to activate the card and choose a PIN.

(C) Funds are placed on the companion card by the recipient. The recipient may:

(i) choose to transfer funds to the companion card by amount or by a percentage of benefits received for the month;

(ii) set up the transfer on a recurring basis or as a one-time occurrence; and

(iii) move money back and forth between the primary account and the companion card as he or she chooses.

(D) The same fees apply to companion cards as they do for the recipient's card.

(~~5~~6) When the recipient informs the worker that he or she did not receive the debit card, the worker checks to see if the recipient's address changed. When the address changed, the worker updates the system with the correct address. The recipient must call the customer service phone number to request a replacement card.

(~~6~~7) When the recipient fails or refuses to activate his or her debit card within 90-calendar days, the benefits are expunged from the debit card and returned to DHS.

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

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

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

(B) The funds may be reloaded on the recipient's debit card if he or she ~~pins~~chooses a PIN for the debit card and requests DHS reissuance within 365-calendar days of the issuance date.

(C) When the recipient fails or refuses to ~~pins~~choose a PIN for the debit card within 10-calendar days of issuing Form 08AD092E, the worker closes the cash assistance benefit due to non-cooperation. When the:

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

(ii) State Supplemental Payment cash assistance benefit closes due to non-cooperation, the recipient's SoonerCare (Medicaid) benefit remains open.

(D) The recipient's cash assistance benefit may be reopened when the recipient ~~pins~~chooses a PIN for the debit card and notifies the worker within 30-calendar days of closure.

(c) **Electronic benefit transfer (EBT) transaction restrictions.** EBT transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or

the processing of a payment for merchandise or service. Per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)), and Section 241.4 of Title 56 of Oklahoma Statutes, no debit or EBT card containing state or federal funds from programs including, but not limited to, TANF may be used in any transaction in any:

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

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

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

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

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

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

(d) **Direct deposit procedures.** When the recipient prefers to receive benefits through direct deposit, he or she ~~must complete and sign the direct deposit form, provide a voided check or a savings account deposit slip, and return them to the address on the form~~goes online to www.goprogram.com or phones 1-888-401-9843 to set up a bank transfer.

(1) ~~To obtain the direct deposit form, the recipient calls the customer service phone number located on the back of the debit card, downloads a direct deposit form from the www.goprogram.com website, or obtains one from the worker.~~When the recipient chooses direct deposit, he or she may decide to transfer 100 percent of the benefit to a designated bank account or may choose to transfer a percentage of the benefits to a bank account and keep the rest of the funds on the debit card.

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

(~~3~~2) Benefits are ~~changed~~transferred to direct deposit for the next payment due after direct deposit information is entered in the system.

(~~4~~3) ~~Funds cannot be transferred~~The recipient may transfer funds from a debit card to ~~direct deposit~~a bank account on a one-time basis. There is a fee associated with the transfer.

(e) **Benefit issuance.** After the initial issuance, the recipient's cash assistance benefit is deposited in the recipient's checking or savings account or loaded on the recipient's debit card each month.

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

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

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

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

(1) When the recipient provides incorrect account information, the cash assistance benefit cannot be deposited in the recipient's bank account. ~~The contractor's staff attempts to contact the recipient to obtain current banking information.~~ When ~~the recipient fails to provide current information or five calendar days lapse without contact~~ this occurs, the contractor converts the payment method to a debit card. ~~The~~When the recipient ~~must complete a new~~wants direct deposit, he or she must request direct deposit ~~form and provide current account information before another attempt is made to issue benefits through direct deposit~~again, per (d) of this Section.

(2) When a deposit is not made to the recipient's direct deposit account or loaded on the debit card, the recipient must report the problem to the contractor's customer service phone number. The contractor handles any communication with banking institutions or debit card vendors and then contacts the recipient regarding resolution.

(3) When the recipient dies while receiving benefits, questions may arise concerning unspent funds in the recipient's bank account or on his or her debit card.

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

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

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

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

(4) When the recipient's cash assistance benefit closes due to transfer of eligibility to another cash assistance case, the payment method is automatically transferred to the new case provided the client number of the payee in the closed and new case is the same. When the recipient's cash assistance benefit closes and he or she later reapplies and is approved with the same client number, the previously chosen payment method is used to issue the cash assistance benefit. The recipient must call the contractor's

customer service phone number to change the payment method or to update bank account information.

(5) When the payee for the cash assistance benefit changes for any reason, the new payee is assigned a new client number unless one was previously issued to him or her.

(A) The new payee is considered an applicant. Refer to (a) and (b) of this Section regarding payment methods and initial payments.

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

[OAR Docket #19-631; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 75. CHILD WELFARE SERVICES

[OAR Docket #19-632]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-16.1 [AMENDED]
Subchapter 3. Child Protective Services
Part 1. Purpose, Definitions, and Child Abuse and Neglect Hotline Protocol
340:75-3-140 [AMENDED]
Part 4. Specialized Investigative Protocols, Child Death or Near-Death Reporting Protocols
340:75-3-410 [AMENDED]
340:75-3-460 [AMENDED]
Part 5. Investigative Findings and Appeals
340:75-3-530 [AMENDED]
Subchapter 6. Permanency Planning
Part 5. Permanency Planning Services
340:75-6-31 through 340:75-6-31.1 [AMENDED]
Part 8. Child Welfare Specialist Role
340:75-6-50 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-88 [REVOKED]
Subchapter 7. Foster Home Care
Part 2. Development of Resource Families
340:75-7-15 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 [AMENDED]
Part 8. Resource Home Continuous Quality Assessment
340:75-7-94 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-6 [AMENDED]
340:75-8-12 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-240 [AMENDED]
Subchapter 12. OKDHS Operated Group Homes [REVOKED]
340:75-12-1 through 340:75-12-16 [REVOKED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 7. Medical Services
340:75-13-61 [AMENDED]
Subchapter 14. Well-Being [NEW]
340:75-14-1 [NEW]
340:75-14-3 [NEW]
Subchapter 15. Adoptions
Part 10. Family Assessment and Preparation Process
340:75-15-84.1 [AMENDED]
340:75-15-89 [AMENDED]
(Reference WF 19-75)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

Chapter 75 Subchapter 1: 10A O.S. §§ 1-4-807 and 1-9-119.

Chapter 75 Subchapter 3: 10A O.S. §§ 1-1-105, 1-2-102, 1-2-109, 1-4-102, 1-4-203, 1-4-205, and 1-6-105; 21 O.S. § 748.2; 22 O.S. §§ 20 and 60.14; and 30 O.S. § 2-101.

Chapter 75 Subchapter 6: 10A O.S. §§ 1-1-102, 1-4-704, 1-4-706, 1-4-707, 1-4-709, 1-4-809, 1-4-811, 1-6-101, 1-7-103, and 1-7-105; Oklahoma School Code Title 70 O.S.; Education of All Handicapped Children Act; 20 U.S.C. §§ 1400-1461; and 20 U.S.C. § 6312.

Chapter 75 Subchapter 7: 10A O.S. §§ 1-7-111, 1-7-115, 1-9-106, 1-9-118, and 1-9-119; 21 O.S. § 692; 57 O.S. § 582; and 18 U.S. § 16.

Chapter 75 Subchapter 8: 10A O.S. §§ 1-2-101, 1-3-102, 1-6-102, 1-7-105, and 1-9-119.

Chapter 75 Subchapter 11: 10A O.S. §§ 1-2-101, 1-3-102, 1-6-107, and 1-7-105; and 70 O.S. § 1-113.

Chapter 75 Subchapter 12: 10 O.S. §§ 7003-7.1, 7004-1.1A, and 7004-3.3.

Chapter 75 Subchapter 13: 10A O.S. § 1-7-103.

Chapter 75 Subchapter 14: 10A O.S. §§ 1-1-105, 1-3-102, 1-7-103, and 1-9-107.

Chapter 75 Subchapter 15: 10 O.S. § 7505.5.3 and 7505-6.3; 10A O.S. § 1-7-111; and 57 O.S. § 582.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:

The proposed amendments to Chapter 75 Subchapter 1 amend the rules to include foster parent notification rights.

The proposed amendments to Chapter 75 Subchapter 3 amend child protective services rules to: (1) delete redundant language and a reference to an internal committee no longer in operation; and (2) revise policy to permit charging a fee for a child abuse and neglect information system (CANIS) search on prospective guardianships for children not in DHS custody, per Senate Bill (SB) 1135 (2018).

The proposed amendments to Chapter 75 Subchapter 6 amend child permanency planning rules to: (1) clarify permanency plan preferences; (2) revise policy on family team meeting; (3) update education guidance following passage of the federal Every Students Succeeds Act, Section 6312 of Title 20 of the United States Code (20 U.S.C. § 6312); and (4) move the medical services for a child section to a subchapter created for children's well-being.

The proposed amendments to Chapter 75 Subchapter 7 amend foster care rules to: (1) reference medical services for a child by the new administrative code number; (2) make changes to resource provider annual reviews; and (3) update military service personnel background information search requirements.

The proposed amendments to Chapter 75 Subchapter 8 amend therapeutic foster care rules to reference medical services for a child by the new administrative code number.

The proposed amendments to Chapter 75 Subchapter 11 amend community-based residential care rules to reference medical services for a child by the new administrative code number.

The proposed amendments to Chapter 75 Subchapter 12 revoke the subchapter on DHS-operated group homes that DHS no longer operates.

The proposed amendment to Chapter 75 Subchapter 13 amends the rule to reference medical services for a child by the new administrative code number.

The proposed creation of Chapter 75 Subchapter 14 establishes guidance on caring for the well-being of a child in DHS custody.

The proposed amendments to Chapter 75 Subchapter 15 amend adoption rules to update military service personnel background information search requirements and revise the frequency of updating resource family assessments.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS OF CHILD WELFARE SERVICES

PART 1. SCOPE AND APPLICABILITY

340:75-1-16.1. Right to be heard and hearing notification to placement providers

(a) Per Section 1-4-807 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-4-807), a foster parent, group home, pre-adoptive parent, or relative providing care for the child in the Oklahoma Department of Human Services (DHS) custody has a right to notice of court proceedings regarding the child and the right to be heard at all proceedings. Except when allowed to intervene, the foster parent, group home, pre-adoptive parent, or relative providing care for the child is not considered a party to the juvenile court proceeding solely because of the right to notice and the right to be heard at the proceeding.

(b) Per 10A O.S. § 1-9-119, the foster parent:

(1) receives a notification of any court hearing including the date and time, the judge or hearing officer's name, the hearing's location, and the case's court docket number; and

(2) is kept informed of decisions concerning the child made by the court, DHS, or the child-placing agency.

SUBCHAPTER 3. CHILD PROTECTIVE SERVICES

PART 1. PURPOSE, DEFINITIONS, AND CHILD ABUSE AND NEGLECT HOTLINE PROTOCOL

340:75-3-140. Child Abuse and Neglect Information System (CANIS) also known as KIDS

(a) **Legal Base for KIDS.** The Child Abuse and Neglect Information System, also known as KIDS, is a permanent, computerized record-keeping system maintained by Child Welfare Services ~~(CWS)~~, ~~pursuant to~~per Section 1-2-108 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-2-108) that requires *the maintenance of all reports of child abuse, sexual abuse, and neglect made pursuant to the provisions of the Oklahoma Children's Code.* Only authorized Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) staff may inquire and report to the information system.

(b) DHS may charge a fee, up to $35.00, for each CANIS search conducted for a prospective guardian of a child not in DHS custody and all other household members 18 years of age and older, per 30 O.S. § 2-101.

PART 4. SPECIALIZED INVESTIGATIVE PROTOCOLS, CHILD DEATH OR NEAR-DEATH REPORTING PROTOCOLS

340:75-3-410. Investigation protocol for reports of abuse or neglect of a child in Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) custody in a foster or trial adoptive home

(a) **Purpose of foster or trial adoptive home investigations.** A child in ~~OKDHS~~DHS care or custody requires ongoing protection from subsequent abuse or neglect while in therapeutic, specialized community home, emergency, Developmental Disabilities Services ~~Division(DDSD)~~(DDS), tribal, kinship, and foster family care or trial adoptive placement.

(b) **Foster or trial adoptive home investigation protocol.** The investigation protocol used during a foster or trial adoptive home investigation is the same protocol used when an investigation is conducted in the child's own home~~is conducted~~, but includes additional interviews and the evaluation of case records relating to the foster or trial adoptive home.

(c) **Abuse or neglect investigation when the child is in ~~OKDHS~~DHS custody in a tribal foster home.** The protocols used during a tribal foster home investigation are the same used when an investigation is conducted in the child's own home and the protocol regarding the Indian child, per Oklahoma Administrative Code (OAC) 340:75-19-10.

(d) **Contracted therapeutic, specialized community, or emergency foster~~, or trial adoptive~~ home investigation protocol.** The protocol used during a contracted therapeutic, specialized community, or emergency foster~~, or trial adoptive~~ home investigation is the same protocol used when an investigation is conducted in the child's own home, but includes additional interviews and evaluation of case records relating to the placement.

(e) **Foster or trial adoptive home investigation findings.** Upon completion of the foster or trial adoptive home investigation, a finding is made, per OAC 340:75-3-500.

(f) **Evaluation to determine continued use or closure of the foster or trial adoptive home.** The results of the foster or

trial adoptive home investigation are evaluated to determine whether to continue to use or to close the foster or trial adoptive home.

(g) **Office of Client Advocacy (OCA) investigates allegations of abuse or neglect in above foster care level settings.** OCA investigates reports of child abuse or neglect of a child in ~~OKDHS~~DHS custody when the child is placed in an above foster care level setting.

340:75-3-460. Child death or near-death ~~and critical incidents~~ review

(a) **Child death or near-death definitions.** ~~Per Section 1-6-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-6-105), the~~The following words and terms ~~apply~~shall have the following meanings, when Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) investigates a child death or near-death or is required to disclose certain information after a child death or near-death that does not meet DHS criteria for investigation~~by OKDHS~~, per Section 1-6-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-6-105).

(1) "Abuse" means harm or threatened harm or failure to protect from harm or threatened harm to the child's health, safety, or welfare by a person responsible for the child (PRFC)~~,~~ including, but not limited to, non-accidental physical or mental injury, sexual abuse, or sexual exploitation. ~~Provided; however,~~However nothing contained in this Section prohibits any parent from using ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling.

(2) "Near-death" means a child is in serious or critical condition as verified by a physician, registered nurse, or other licensed health care provider. Verification of the child's medical condition may be provided in person, by ~~telephone~~phone, ~~mail,~~ email, ~~or~~ facsimile, or mail.

(3) "Person responsible for a child" means, for the purposes of this ~~statute~~Statute only:

(A) "~~person responsible for a child's~~a PRFC health, safety, or welfare~~"~~ as provided in 10A O.S. § 1-1-105; and

(B) any person who voluntarily accepted the duty of supervising a child; or

(C) any person who ~~has been~~was directed or authorized to supervise a child by the ~~person responsible for the child's~~PRFC health, safety, or welfare.

(b) **Child death or near-death investigation protocol.** The child death or near-death investigation requires a multidisciplinary approach. The protocol used during the child death or near-death investigation is the same protocol used in other in-home and out-of-home investigations but includes additional interviews, coordination with law enforcement and medical professionals, and evaluation of case records, per Oklahoma Administrative Code (OAC) 340:75-3-200.

(c) **Child death and near-death investigations subject to program, administrative, or committee review.** The child death or near-death resulting from suspected abuse or neglect investigated by ~~OKDHS are~~DHS is subject to evaluation by program, or administrative review~~, or by the OKDHS Critical Incidents Review Committee~~.

(d) **Public disclosure of ~~OKDHS~~DHS child death and near-death information.** Requests for the release of information concerning the ~~OKDHS~~DHS-investigated child death and near-death are processed,~~according to~~ per OAC 340:75-1-44.

(e) **~~Notice of death or~~Death and near-death notice provided to Governor and Legislature.** ~~Per 10A O.S. § 1-6-105, when OKDHS~~When DHS has reasonable cause to suspect the child death or near-death is the result of abuse or neglect, ~~OKDHS~~DHS notifies the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives of the initial investigative findings of the child protective services review, per 10A O.S. § 1-6-105. Notice is communicated securely no later than 24 hours after the reasonable determination of suspicion.

PART 5. INVESTIGATIVE FINDINGS AND APPEALS

340:75-3-530. Appeal process for substantiated findings of child abuse or neglect

(a) **Purpose.** The Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires the Oklahoma Department of Human Services (DHS) to provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect. The appeal process:

(1) provides individuals with a substantiated finding of child abuse or neglect an opportunity for due process;

(2) serves as a quality assurance mechanism to assess findings compliance with child protective services (CPS) standards, per Oklahoma Administrative Code (OAC) 340:75-3-120 and 340:75-3-130; and

(3) provides substantiated findings review by Child Welfare Services (CWS) personnel not involved in any other stage of the case.

(b) **Eligibility criteria.**

(1) An individual may be eligible to request an appeal when the individual is a person responsible for the child's health, safety, or welfare (PRFC), per OAC 340:75-3-120 in an investigation involving abuse or neglect allegations and the investigation results in a substantiated finding regarding the PRFC.

(2) An eligible individual may request a review through the appeal process when:

(A) no deprived petition is filed; or

(B) a deprived petition is filed and the court case is dismissed prior to adjudication.

(3) An individual meeting the requirements in (1) and (2) of this subsection is not eligible for a review through the appeal process when:

(A) other court action is filed or a court order is issued concerning the alleged child abuse or neglect including any:

(i) permanent protective orders issued against the PRFC that includes the alleged child victim(s); or

(ii) pending or concluded criminal court proceedings; or

(B) another DHS program-specific review is pending or was conducted regarding:

(i) a child death or near-death; or

(ii) any substantiated finding of an out-of-home care investigation completed by a child welfare (CW) specialist or an Office of Client Advocacy investigator.

(c) **Tribal Investigations not eligible for DHS appeal process.** The DHS appeal process applies only to investigations conducted by DHS. Child abuse or neglect investigations by a tribal representative or on tribal land are not eligible for the DHS appeal process.

(d) **Procedures for appeal process.** The procedures for the appeal process are outlined in (1) through (4) of this subsection.

(1) **Notification to PRFC.** Upon substantiation of abuse, neglect, or both, the CW specialist notifies the PRFC of the finding by mailing Forms 04KI019E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI020E, Request for Appeal of Substantiated Findings of Child Abuse or Neglect, provided the criteria in ~~OAC 340:75-3-530~~this Section are met. Forms 04KI019E and 04KI020E are:

(A) mailed within 10-calendar days of substantiation of abuse or neglect;

(B) mailed to the PRFC's last known address:

(i) Form 04KI019E informs the PRFC of:

(I) any substantiated child abuse or neglect finding in the investigation; and

(II) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party.

(ii) Form 04KI020E specifies:

(I) the PRFC may file an appeal by mailing a request to CWS Appeals Program Unit within 15-calendar days from the postmark on the envelope containing Form 04KI020E; and

(II) failure to submit the appeal request within 15-calendar days from the postmark on the envelope containing Form 04KI020E results in the finding becoming final and the PRFC waives any right to appeal this finding in the future, unless good cause is established per ~~OAC 340:75-3-530~~this Section; and

(C) not mailed to the PRFC when case records reflect notification may place family members at risk.

(2) **Conditions of good cause.** A PRFC is granted a review despite failure to make a timely response, provided good cause is established including, but not limited to, severe illness or other disabling condition.

(3) **Response to appeal request from PRFC.** When the PRFC requests a review within the required time, the Appeals Program Unit responds to the PRFC through written notice within 10-calendar days following receipt of the PRFC's request for review. The Appeals Program Unit notifies the PRFC:

(A) of the right to provide additional information through written statements that must be submitted within 30-calendar days from the postmark on the envelope containing the notification that the appeal was accepted for review;

(B) that failure to submit additional information within 30-calendar days results in a waiver of this right, unless good cause is established per ~~OAC 340:75-3-530~~this Section; and

(C) that verification of legal representation must be established when the PRFC requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.

(4) **Review Procedure.** Within 120-calendar days following acceptance of the PRFC's timely request for a review or a late request for a review when good cause was established per ~~OAC 340:75-3-530~~this Section, the CWS Appeals Panel (Panel) determines if the substantiated finding of abuse or neglect meets substantiation protocol per OAC 340:75-3-120.

(A) The decision to uphold, modify, or reverse the original finding of abuse or neglect is determined by reviewing:

(i) Form 04KI003E, Report to District Attorney, that includes Form 04KI030E, Assessment of Child Safety, attachments, and relevant CWS information including child welfare (CW) history and referrals; and

(ii) all written documents submitted by the PRFC.

(B) When the Appeals Program Unit determines the finding failed to meet the criteria for substantiation per OAC 340:75-3-120, the Panel determines if the preliminary decision by the Appeals Program Unit:

(i) was based upon lack of credible evidence to support the allegations of child abuse, neglect, or both; or

(ii) is based upon a lack of documentation by the ~~child welfare (~~CW~~)~~ specialist.

(I) When a lack of documentation exists, the Appeals Program Unit sends notification to the district director, approving supervisor, and CW specialist that information is missing and requests the information be added to the report or scanned into the KIDS file cabinet.

(II) After notification by the Appeals Program Unit, the district director reopens and reassigns the investigation.

(III) The assigned CW specialist adds the additional information to the report within 15-calendar days of the reassignment and sends notification to the Appeals Program Unit when completed.

(IV) The Appeals Program Unit reconsiders the ~~PRFC~~PRFC's appeal with the additional

information and upholds, modifies, or reverses the finding as appropriate.

(C) The Appeals Program Unit enters a modified finding in KIDS, when appropriate.

(i) When the substantiation finding is appropriate, but the allegation in KIDS is incorrect, the Panel chairperson ensures the inappropriate allegation is marked as an improper entry and the correct allegation is added with the substantiated finding.

(ii) Forms 04KI019E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI020E are mailed to the PRFC with the corrected allegations with the substantiated finding.

(D) The Appeals Program Unit provides written notification of the final determination of the finding within 120-calendar days following acceptance of the PRFC's request for a review to the:

(i) PRFC who requested the review;

(ii) district director;

(iii) regional deputy director;

(iv) CW supervisor;

(v) CW specialist;

(vi) ~~district attorney's office in the county where the finding originated, when the finding is reversed;~~

~~(vii)~~ tribe, when applicable; and

(~~viii~~vii) Child Care Services, when applicable.

(E) When the finding is reversed, the district attorney's office in the county where the finding originated is notified by district staff.

SUBCHAPTER 6. PERMANENCY PLANNING

PART 5. PERMANENCY PLANNING SERVICES

340:75-6-31. Permanency planning (PP) for the child in Oklahoma Department of Human Services (DHS) custody

(a) **Legislative intent.** Per Section 1-1-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-102), whenever it is necessary for a child to be placed outside of the home, per the Oklahoma Children's Code, it is the intent of the Legislature that:

(1) each child be assured of the care, guidance, and supervision in a permanent home or foster home that serves the best interests of the child including, but not limited to, the development of the moral, emotional, spiritual, mental, social, educational, and physical well-being of the child; and

(2) permanent placement is achieved as soon as possible for the child.

(b) **~~Permanency planning~~PP and placement preferences.** The purpose of ~~permanency planning~~PP is to develop an appropriate plan addressing the child's immediate and long-term needs for safety, permanency, and well-being. ~~Permanency planning~~PP begins immediately when a child is placed in DHS custody and continues until the child is living in a permanent home and the child welfare (CW) case is closed.

(c) **Efforts to place the child with a suitable relative.** ~~Per 10A O.S. § 1-4-706, every~~Every effort is made to place the child with a suitable relative of the child, per 10A O.S. § 1-4-706.

(d) **Consideration given to child's initial out-of-home placement.** Careful planning and consideration is given to the child's initial placement so that in the event reunification ~~fails or~~ is delayed or fails, the first placement made is the best available placement to provide permanency for the child, per 10A O.S. § 1-4-706.

(e) **Concurrent ~~permanency planning~~PP.** ~~Per 10A O.S. § 1-4-706, when~~When a child is removed from the custody of the child's parent, DHS immediately assesses the need for ~~permanency planning~~PP with the intention that permanency occurs for the child at the earliest opportunity, per 10A O.S. § 1-4-706.

(f) **Permanency hearing.** Permanency hearings are held as required, per 10A O.S. § 1-4-811~~,~~ and, per Oklahoma Administrative Code (OAC) 340:75-1-18.1.

(g) **Permanency plan preferences.** The permanency plan ~~preferences in order are:~~indicates the intended or desired outcome for each child and influences the services and interventions used to achieve such outcome. The permanency plan is consistent with each child's legal status and is in his or her best interests.

(1) ~~reunite the child with the child's parent or legal guardian;~~When a plan is established, careful consideration is given when changing the plan to ensure the child's immediate and long-term needs for safety, permanency, and well-being continue to be met.

(2) ~~terminate parental rights and place the child for adoption;~~In most cases, reuniting the child with his or her parent or legal guardian is the original case plan goal, unless a petition for immediate termination of parental rights is filed or the court makes a finding that reasonable efforts to reunite are not required.

(3) ~~establish guardianship; or~~When reunification is not possible, other permanency plan options based on the child's best interests include:

(A) termination of parental rights resulting in an adoption;

(B) permanent guardianship; or

(~~4~~C) a planned alternative permanent placement provided a child is 16 years of age ~~or~~and older.

(h) **Reunification.** In most situations, the initial permanency plan is to reunite the child with the family. ~~Per 10A O.S. § 1-7-103, the~~The child may be returned to the home of the parent or legal guardian from whom the child was removed with prior court approval, per 10A O.S. § 1-7-103. When the permanency plan is reunification, services are implemented until:

(1) the child is returned home, the family home has stabilized, and the court case is dismissed; or

(2) it is determined the conditions that necessitated intervention ~~have~~were not ~~been~~ corrected, although sufficient time and services ~~have been~~were provided.

(i) **Exceptions to reunification as the preferred permanency plan.** Exceptions to reunification as the preferred permanency plan include:

(1) voluntary relinquishment of parental rights by all parents, biological, legal, presumed, and alleged;

(2) a Petition for Termination of parental rights is filed; or

(3) the court finds reasonable efforts to reunite the child and family are not required as outlined in 10A O.S. § 1-4-809 and OAC 340:75-1-18.4.

(j) **Priority for reunification with the custodial parent or placement with the non-custodial parent.** When the child's parents do not live together, the priority for reunification is primarily with the custodial parent; however, a home assessment may be conducted regarding the noncustodial parent to assess the possibility of placement or custody with the noncustodial parent, when appropriate.

(k) **Placement with the noncustodial parent.** The court may place the child with the noncustodial parent when it is in the child's best interests.~~of the child~~ per 10A O.S. § 1-4-707. When the child is placed with the noncustodial parent, the court may order the noncustodial parent to assume:

(1) sole custodial responsibilities for the child; or

(2) custody of the child under DHS protective supervision.

(l) **Final permanency order.** Per 10A O.S. § 1-4-707, when the court orders the noncustodial parent to assume sole custodial responsibilities for the child, the court may also:

(1) order reasonable visitation and the payment of child support by the child's other parent; and

(2) terminate its jurisdiction in the deprived action by entering a final permanency order determining custody, visitation, and child support. The final permanency order:

(A) remains in full force and effect and controls custody or child support orders entered in an administrative or district court initiated prior to, or during the pendency of the deprived action until it is modified by a subsequent court order; and

(B) may be docketed and filed in the prior, existing, or pending administrative or district court action; or

(C) when there is no administrative or district court action in existence, the surviving order may be used as the sole basis for opening a new administrative or district court action.

(m) **Adoption.** When a child cannot return safely to his or her own home, ~~in most cases~~ adoption is the preferred permanency plan in most cases.

(n) **Legal guardianship.** A guardianship may be the permanency plan for a child, when reunification and adoption ~~have been~~were ruled out.

(1) A guardianship is not preferred over adoption because this option does not provide the same level of family permanency. The court may establish a permanent guardianship between a child and a relative or other adult, per 10A O.S. § 1-4-709, when the guardianship is in the child's best interest.

(2) Subject to the availability of funds, financial assistance is available to the legal guardian~~,~~ provided the eligibility requirements are met, per OAC 340:75-6-31.4~~are met~~.

(o) **Planned alternative permanent placement.** ~~Per 10A O.S. § 1-4-811, a~~A permanency plan of planned alternative permanent placement is limited to a child 16 years of age ~~or~~and older when DHS documents a compelling reason for the court to determine that returning home, or placement of the child for adoption or guardianship is not in the child's best interests, per 10A O.S. § 1-4-811.

(p) **Successful adulthood plan.** Every child 14 years of age ~~or~~and older has a transition plan to successful adulthood, per OAC 340:75-6-110.

(q) **Notice of rights.** Every child 14 years of age ~~or~~and older is provided a notice of rights, per OAC 340:75-6-110.

(r) **Emancipation.** The federal definition of emancipation is the age at which the child reaches majority. In Oklahoma, 18 years of age is the age of emancipation.

340:75-6-31.1. Family ~~team~~ meeting ~~(FTM)~~(FM) process

The FM's purpose ~~of the FTM~~ is to plan and make decisions for and, involve and engage the family of the child in Oklahoma Department of Human Services custody.

(1) The court may require facilitation of a meeting no later than 30-calendar days prior to a permanency hearing when a child ~~has been~~was in out-of-home care for 12 months or longer, per Section 1-4-810 of Title 10A of the Oklahoma Statutes and ~~a FTM~~an FM is used for this purpose.

(2) ~~FTM~~An FM may include parents, caregivers, children, relatives, family friends, child welfare specialists, service providers, ~~members of~~ community ~~groups~~group members, and other appropriate community partners.

PART 8. CHILD WELFARE SPECIALIST ROLE

340:75-6-50. Education

(a) **Education assurance.** A child in the custody or care of the Oklahoma Department of Human Services (DHS) is provided access to an education including teaching, educational materials, and books, per Section 1-7-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-105).

(b) **Education assurance required for the Title IV-E eligible child.** Per 10A O.S. § 1-7-103, DHS is required to ~~assure~~ensure that a child who attains the minimum age for compulsory school attendance and is eligible for a Title IV-E foster care payment is:

(1) enrolled in an institution that provides elementary or secondary education;

(2) instructed in elementary or secondary education in any legally authorized education program;

(3) in an independent-study elementary or secondary education program; or

(4) incapable of attending school on a full-time basis due to a documented medical condition supported by regular updates.

(c) **Health and education records provided to court.** Per 10A O.S. § 1-4-704, the child's most recent available health and educational records are provided to the court at the court's request including, but not limited to:

(1) the names and addresses of the child's health and educational providers;

(2) the child's grade-level performance;

(3) the child's school record;

(4) the child's immunization record;

(5) the child's known medical problems including communicable diseases;

(6) the child's medications; and

(7) any other relevant health and education information.

(d) **Individuals with Disabilities Education Act (IDEA).** The child with disabilities in Oklahoma, including the child in DHS custody, has the statutory right to receive special education and related services from birth through 21 years of age as mandated by Title 70 O.S. Oklahoma School Code and the Education of All Handicapped Children Act, codified at Sections 1400-1461 of Title 20 of the United States Code (20 U.S.C. §§ 1400-1461). IDEA specifies that each child with a disability 3 to 22 years of age receives specialized services to meet the child's needs. The child with disabilities has the basic rights to:

(1) a Free Appropriate Public Education (FAPE);

(2) an education in the least restrictive setting possible; and

(3) an Individualized Education Program (IEP).

(e) **Parents' rights regarding educational requests.** Parents and surrogate parents, including foster parents acting in place of the parents, have the right to examine the child's complete school records. In addition, the school system is obligated to provide notice to the parent when the school system refuses to take actions requested by the parent. The notice informs the parent of each procedure available to the parent under IDEA and must be written in the parent's native language.

(f) **Foster or surrogate parents acting in place of the parents.** When the parent is unable, unavailable, or unwilling to participate in the child's school arrangements, foster parents may act in place of the parent to represent the child's educational interests. DHS employees and other public agency employees may not act in place of a parent or sign an IEP. Volunteers, who serve as surrogate parents for children in placements other than foster care, are required to complete training through the Oklahoma State Department of Education.

(g) **Every Student Succeeds Act (ESSA) child welfare (CW) point of contact.** Per 20 U.S.C. § 6312, each CW district must:

(1) designate a point of contact;

(2) notify each local educational agency in that CW district, in writing, of the designee; and

(3) create a local educational agency plan to support ESSA guidelines for students in foster care.

(~~g~~h) **Oklahoma's Promise.** DHS provides parents, ~~resource~~foster parents, and legal guardians of foster youth with information on Oklahoma's Promise, formerly known as the Oklahoma Higher Learning Access Program (OHLAP) including, but not limited to, eligibility, application guidelines, academic requirements, and any other information required by Oklahoma's Promise for participation in the program.

(~~h~~i) **Corporal punishment by school.** DHS and the ~~resource~~foster parent do not authorize school personnel to administer corporal punishment to a child in DHS custody. The ~~resource~~foster parent does not authorize corporal punishment by school personnel, but refers school personnel to the CW specialist to establish alternative discipline methods, per Oklahoma Administrative Code 340:75-7-38.

PART 11. PERMANENCY PLANNING AND PLACEMENT SERVICES

340:75-6-88. Medical services for the child in Oklahoma Department of Human Services (DHS) [REVOKED]

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

~~(1) **"Consent"** means obtaining approval from a person for the procedure after providing an explanation of the necessity for the procedure involved, any known risks involved, and, when appropriate, any alternative course of care.~~

~~(A) **"Informed consent"** means voluntary written consent from a person who received full, accurate, and sufficient information and explanation about a child's medical condition, medication, and treatment to enable the person to make a knowledgeable decision without being subjected to any deceit or coercion.~~

~~(B) **"Separate and specific consent"** means a licensed physician, psychiatrist, or other medical professional recommended a treatment or medication and requires an additional consent form provided by the professional be signed to authorize the treatment to occur or medication to be administered.~~

~~(C) **"Sufficient explanation"** means information provided and explained in plain language by the prescribing physician or physician's representative to the consent giver including, but not limited to, the:~~

~~(i) medical care and treatment or the medication;~~

~~(ii) reason for prescribing the treatment or medication and the medication's purpose or intended results;~~

~~(iii) side effects, risks, and contraindications including the effects of stopping the medication;~~

~~(iv) method for administering the treatment or medication and dosage range, when applicable;~~

~~(v) potential drug interactions;~~

~~(vi) alternative treatments;~~

~~(vii) behavioral health or other services used to complement the use of the psychotropic medication, when applicable; and~~

~~(viii) other treatment interventions considered by the physician that may include, but are not limited to, medical, mental health, behavioral, counseling, or other services.~~

~~(2) **"DHS custody"** means a child is in the voluntary, emergency, temporary, or permanent custody of the Oklahoma Department of Human Services (DHS).~~

~~(3) **"Medical care or treatment"** means per Section 1-3-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-3-102) medical care or treatment that is either extraordinary or routine and ordinary.~~

~~(A) Extraordinary medical care and treatment includes, but is not limited to:~~

~~(i) surgery;~~

~~(ii) general anesthesia;~~

~~(iii) blood transfusions; or~~

~~(iv) invasive or experimental procedures.~~

~~(B) Routine and ordinary medical care and treatment does not include any type of extraordinary care or treatment and includes, but is not limited to:~~

~~(i) any necessary medical and dental examinations and treatment;~~

~~(ii) medical screenings;~~

~~(iii) clinical laboratory tests;~~

~~(iv) blood testing;~~

~~(v) preventative care;~~

~~(vi) health assessments;~~

~~(vii) physical examinations;~~

~~(viii) immunizations;~~

~~(ix) contagious or infectious disease screenings;~~

~~(x) tests and care required for treatment of illness and injury, including x-rays, stitches, and casts; or~~

~~(xi) the provision of psychotropic medication.~~

~~(4) **"Placement provider"** means the person, foster parent, or administrator of a facility providing out-of-home care for a child in DHS custody.~~

~~(5) **"Psychotropic medications"** means medications with well-demonstrated efficacy in the treatment of mental disorders through the modification of behavior, mood, and emotions.~~

~~(b) **Medical services for the child in DHS custody in out-of-home care.** 10A O.S. § 1-7-103 requires DHS to provide medical care necessary to preserve the child's health per Oklahoma Children's Code provisions. The child in DHS custody receives:~~

~~(1) Early Periodic, Screening, Diagnosis, and Treatment (EPSDT) screening according to the schedule of frequency, or at a minimum an annual physical exam. In addition, DHS provides, as soon as practicable, after the filing of the petition, an initial health screening for each child placed in DHS emergency custody, to identify any health problems requiring immediate treatment, diagnosis of infections and communicable diseases, and an evaluation of injuries or other signs of abuse or neglect.~~

~~(2) a yearly behavioral health or developmental screening, and when recommended a behavioral health or developmental assessment, within 60 calendar days of the screening;~~

~~(3) a yearly dental exam when the child is over 3 years of age. A child under 3 years of age receives dental services as needed;~~

~~(4) an initiation of immunizations that are kept current;~~

~~(5) a visual and hearing evaluation exam and corrective lenses or hearing aids, when indicated;~~

~~(6) outpatient or inpatient behavioral mental health treatment, when appropriate;~~

~~(7) physician's services when the child is sick. This service is not considered a physical exam;~~

~~(8) contagious or infectious disease screenings, including Human Immunodeficiency Virus (HIV) exams or testing, are provided as needed or upon request by a placement provider in a manner consistent with the Centers for Disease Control guidelines for time and testing frequency, per Oklahoma Administrative Code 340:75-1-113; and~~

~~(9) follow-up and referral services as recommended by a qualified professional.~~

~~(c) **Consent for medical services.**~~

~~(1) **DHS authority to consent to routine and ordinary medical care and treatment.**~~

~~(A) DHS may consent to routine and ordinary medical care and treatment when the child is in DHS custody. DHS makes reasonable attempts, per 10A O.S. § 1-3-102, when the child is in voluntary, emergency, or temporary custody to:~~

~~(i) notify the child's parent or legal guardian of the provision of routine and ordinary medical care and treatment; and~~

~~(ii) keep the parent or legal guardian involved in the care.~~

~~(B) DHS may authorize the placement provider, in writing, through the placement provider agreement, to consent to routine and ordinary medical care and treatment needed for the child upon the advice of a licensed physician, including psychotropic medication.~~

~~(2) **Consent for extraordinary medical care.**~~

~~(A) No DHS employee is authorized to consent to extraordinary medical care and treatment for any child in DHS voluntary, emergency, temporary, or permanent custody.~~

~~(B) When the child is in DHS voluntary, emergency, or temporary custody, consent for the child's extraordinary medical care and treatment is obtained from the parent or legal guardian, unless the:~~

~~(i) parent is unavailable to provide consent;~~

~~(ii) parent refuses to consent; or~~

~~(iii) care and treatment is related to the suspected abuse or neglect.~~

~~(C) Court authority is required for extraordinary medical care and treatment when the:~~

~~(i) child is in DHS permanent custody;~~

~~(ii) parent is unavailable to provide consent;~~

~~(iii) parent refuses to provide consent; or~~

~~(iv) care and treatment is related to the suspected abuse or neglect.~~

~~(D) When the recommended extraordinary medical care and treatment is not the result of a life-threatening emergency requiring immediate medical intervention, the court, per 10A O.S. § 1-3-102:~~

~~(i) holds a hearing, upon the application of the district attorney and notice to all parties; and~~

~~(ii) may authorize the recommended extraordinary care and treatment.~~

~~(E) DHS does not, in any circumstance, consent to a child's abortion, sterilization, termination of life support, or a Do-Not-Resuscitate order. The court may authorize the withdrawal of life-sustaining medical treatment or the denial of the administration of cardiopulmonary resuscitation on behalf of the child in DHS custody, upon the written recommendation of a licensed physician, after notice to the parties, and a hearing.~~

~~(3) **Medical consent for child in protective custody.**~~

~~(A) Per 10A O.S. § 1-3-102, when the child taken into protective custody without a court order, requires emergency medical care prior to the emergency custody hearing, a peace officer, court employee, or the court may authorize treatment as necessary to safeguard the health and life of the child when the:~~

~~(i) treatment is related to the suspected abuse and neglect;~~

~~(ii) parent or guardian is unavailable to consent to the treatment recommended by a physician; or~~

~~(iii) parent or guardian refuses to consent to the treatment recommended by a physician.~~

~~(B) Before a peace officer, court employee, or the court authorizes treatment based on the unavailability of the parent or legal guardian, law enforcement exercises diligence in locating the parent or guardian, when known.~~

~~(4) **Consent for medical care for the child in his or her own home.** The parent of the child in DHS custody placed in his or her own home consents to routine and ordinary medical care and treatment and extraordinary medical care and treatment needed by the child. In the event of parental refusal, DHS may consent to routine and ordinary medical care and treatment needed by a child in DHS custody as provided by OAC 340:75-6-88(c)(1). In the event of parental refusal to consent to extraordinary medical care and treatment needed by a child in DHS custody, DHS complies with the procedures set forth in OAC 340:75-6-88(c)(2).~~

~~(5) **Consent for extraordinary medical care for the child who traveled out-of-state.** When the child is out of state and requires extraordinary medical care and treatment, the judge may authorize the physician or medical facility to provide the extraordinary medical care via a verbal or written order.~~

~~(6) **Experimental medical procedures.** Medical procedures that are experimental may not be compensable through Medicaid and are considered to be extraordinary medical care and treatment that must be authorized by the parent or court order.~~

SUBCHAPTER 7. FOSTER HOME CARE

PART 2. DEVELOPMENT OF RESOURCE FAMILIES

340:75-7-15. Background information search and assessment of results

(a) **Authorization to conduct criminal history records searches.** The applicants and adult household members give consent for Oklahoma State Bureau of Investigation (OSBI) and Federal Bureau of Investigation (FBI) criminal histories records searches by signing Form 04AD003E, Request for Background Check.

(b) **Background information search for applicants and adult household members.** A background information search is conducted regarding each adult in the applicant's home as a safeguard for children placed in Oklahoma Department of Human Services (DHS) custody. Results from the background information searches are obtained, assessed, and documented prior to the applicant's approval. Background information searches are conducted at the time of application and include, but are not limited to:

(1) an OSBI name and criminal history records search;

(2) an FBI national criminal history records search, based on fingerprints, per Section 1-7-111 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-111);

(3) a search of the Oklahoma Sex Offender Registry;

(4) a search of the Mary Rippy Violent Offender Registry;

(5) an Oklahoma Department of Public Safety (DPS) report;

(6) a search of the Oklahoma State Courts Network including Oklahoma District Court Records to determine if the applicant or adult household member is, or was, a party in any court action;

(7) a search of all DHS records, including child welfare (CW) records, involving the applicant~~,~~ and each adult household member~~, and any child of the applicant or adult household member living in or outside of the home~~;

(8) a criminal military history from the service member's branch of service and Family Advocacy Program records, for the active~~, inactive, or retired~~ military applicant or adult household member;

(9) a search of the Restricted Registry;

(10) a search of Nontechnical Services Worker Abuse Registry maintained by the Oklahoma State Department of Health;

(11) a search of the Community Services Worker Registry;

(12) a search of all applicable out-of-state child abuse and neglect registries for the applicant or adult household member, who has not lived in Oklahoma continuously for the past five years, per 10A O.S. § 1-7-111.

(A) The potential resource home is not approved without the results for the applicant and adult household members of the out-of-state child abuse and neglect registry checks, when a registry is maintained in the applicable state.

(B) When a child abuse and neglect registry is not maintained in the applicable state, DHS requests any information that can be provided from the state; and

(13) a search of Juvenile Online Tracking System (JOLTS) records for any applicant's or adult household member's child, 13 through 17 years of age, living in or outside of the home.

(c) **Background information summary.** All background information is documented on Form 04AF007E, Records Check Documentation. A copy of Form 04AF007E is shared with the resource family partner (RFP) or the resource family assessment (RFA) contractor responsible for completing an RFA. The RFP is provided background information only for searches the RFP does not conduct.

(d) **Exception to fingerprinting.** Per 10A O.S. § 1-7-111, the DHS Director or designee may authorize an exception to the fingerprinting requirement, and authorize use of an alternative procedure for obtaining a national criminal history records search for any applicant or adult residing in the home who has a severe condition that precludes such person being fingerprinted. In limited, case-specific circumstances, DHS may not be able to obtain:

(1) an individual's fingerprints as a result of the individual's disability; or

(2) legible fingerprints due to low quality fingerprints, as a result of age, occupation, or other conditions, thereby making it impossible for the National Crime Information Center (NCIC) to provide results.

(e) **Out-of-state equivalent records check required based on length of residency.** Prior to approval, applicants or adult household members who have lived in Oklahoma for less than five years must provide equivalent background records checks from previous state(s) of residence. Equivalent records checks include, but are not limited to, a state's criminal history search, including DPS and Sex Offender registries. Prior to approval, DHS obtains the child abuse and neglect registry check from the previous state(s) of residence, when a registry is available. When a child abuse and neglect registry is not maintained in the applicable state, DHS requests any information that the state can provide.

(f) **Residence time requirement for kinship applicants.** Prior to placement, kinship applicants or adult household members who have not lived in Oklahoma continuously for the past five years must submit fingerprints. DHS must obtain the child abuse and neglect registry check from the previous state(s) of residence, when a registry is available. Both the national criminal history records search and the child abuse and neglect registry checks must be completed, prior to a child's placement in a kinship home, per 10A O.S. § 1-7-111. When a child abuse and neglect registry is not maintained in the applicable state, DHS requests any information that the state can provide.

(g) **New household members in the resource home.** The resource parent notifies the resource specialist within 24 hours of a new household member in the resource home. A resource family's failure to notify the resource specialist of a new household member or the refusal of a household member who remains in the home to consent to a background information search is cause for removal of the foster care child from the home and cancellation of the foster care contract.

(1) DHS completes a background information search, per this Section, for persons 18 years of age and older residing in the resource home for 30-calendar days or more. The resource parent's child who reaches 18 years of age is considered in this category.

(2) An adult household member that moves into the resource home must consent to a background information search and be fingerprinted immediately after notification to the resource specialist.

(3) The resource parent's child who turns 18 years of age must consent to a background information search and be fingerprinted within 30-calendar days of turning 18 years of age.

(4) Any child, 13 through 17 years of age~~, that~~ who moves into the home, must have a JOLTS check completed immediately.

(5) A new household member residing in the resource home cannot be left alone with a child in DHS custody, until the background information search is complete.

(h) **Kinship applicant criminal history records searches after normal business hours or on a holiday.** In determining the suitability of the potential kinship home, DHS uses the DHS Office of Background Investigations (OBI) to perform a name-based state and federal criminal history records search, per Section 901 et seq. of Title 28 of the Code of Federal Regulations. When OBI is not operational, DHS may elect to contract or otherwise collaborate with local law enforcement agencies to perform a name-based state and federal criminal history records search followed by fingerprint verification, per 10A O.S. § 1-7-115.

(i) **Assessment of background information search results.**

(1) **Felony convictions.** DHS denies a resource home application when the applicant or any person residing in the applicant's home has a criminal conviction record for any felony offenses listed in (A) through (E) of this paragraph. The criminal conviction of an approved resource parent or any person residing in the resource home of any of the felony offenses listed in (A) through (E) of this paragraph requires the closure of the resource home, cancellation of the foster care contract, and removal of every child in DHS custody from the home. The felony offenses are:

(A) physical assault, battery, or a drug-related offense, when the conviction occurs within the five-year period preceding the application date;

(B) child abuse or neglect;

(C) domestic abuse;

(D) a crime against a child including, but not limited to, child pornography; or

(E) a crime involving violence including, but not limited to, rape, sexual assault, or homicide, but excluding those crimes specified in (A) of this paragraph. Per 21 O.S. § 692, homicide includes manslaughter. Per Section 16 of Title 18 of the United States Code, a crime involving violence means, an offense that:

(i) has an element of the use, attempted use, or threatened use of physical force against the person or property of another; or

(ii) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(2) **Sex-related crimes.** DHS denies the application to become a resource parent, when the applicant:

(A) or any person residing in the applicant's home has a conviction for any crime, felony or misdemeanor, specified in 57 O.S. § 582, whether the conviction occurred upon a:

(i) verdict;

(ii) plea of guilty; or

(iii) plea of nolo contendere; or

(B) is subject to, living with, or married to a person who is subject to the Oklahoma Sex Offender Registration Act.

(3) **Arrests, charges, or other convictions.** Approval of an applicant who has, or is living with a person who has a history of arrests, charges, or convictions for any felony, other than those listed in (1) of this subsection, or a relevant misdemeanor may be approved as a resource parent on a case-by-case basis. A relevant misdemeanor includes:

(A) assault and battery;

(B) alcohol- or drug-related offenses;

(C) domestic violence; or

(D) other offenses involving the use of physical force or violence against the person or property of another.

(4) **Child abuse and neglect investigations.** DHS determines, on a case-by-case basis, the approval of any resource applicant with a history of child abuse and neglect investigations.

PART 4. ROLES AND RESPONSIBILITIES

340:75-7-37. Resource parent responsibilities

(a) **Resource compliance.** The resource parent complies with the Oklahoma Children's Code, the Oklahoma Child Care Facilities Licensing Act, and the rules promulgated by the Oklahoma Department of Human Services (DHS), per Sections 1-9-106 and 1-9-118 of Title 10A of the Oklahoma Statutes (10A O.S. §§ 1-9-106 and 1-9-118).

(b) **Resource parent responsibility to the child in DHS custody and the child's family.** The resource parent's responsibilities to the child in DHS custody placed in foster care and the child's family include:

(1) integrating the child into the resource family setting and caring for the child as the resource parent would care for the resource parent's own child;

(2) bridging with the child's parent, per Oklahoma Administrative Code (OAC) 340:75-7-18;

(3) coordinating visitation and contact between the child, siblings, and family members including face-to-face, phone, email, and mail contact, when appropriate, per OAC 340:75-6-30;

(4) participating in the initial meeting with the child's parents coordinated by DHS, per OAC 340:75-7-12;

(5) helping the child understand why he or she is in foster care and attempting to resolve the grief caused by separation from the child's family;

(6) helping the child maintain a connection to the child's kin, culture, and community;

(7) helping the child develop a positive identity and self-esteem that includes feeling lovable, capable, worthwhile, and competent;

(8) utilizing appropriate parent-child conflict resolution, and behavior and stress management techniques in a manner appropriate to the child's age and development, without using any type of physical discipline, per OAC 340:75-7-38;

(9) participating with SoonerStart services, per OAC 340:75-7-65, when applicable;

(10) enrolling the child in an accredited school, when applicable, ensuring the child attends school, and completes schoolwork, per OAC 340:75-6-50;

(11) advocating for the child to obtain timely, appropriate educational testing and placement;

(12) attending school conferences and Individualized Education Program (IEP) meetings and following up with recommended services including, but not limited to, tutoring or special assistance with school work, per OAC 340:75-6-50;

(13) exercising the reasonable and prudent parent standard when determining the child's participation in extracurricular and other recreational activities as age- and developmentally-appropriate, such as allowing the child overnight stays with appropriate individuals;

(14) ensuring the child's necessary medical, dental, and counseling needs are met and maintaining records of all medical, dental, and counseling appointments, per OAC ~~340:75-6-88~~340:75-14-3;

(15) promoting and supporting the child's opportunity to participate in the religious practices of the child's family's choice, per OAC 340:75-6-49;

(16) providing for the child's access to legal counsel including, but not limited to, mail contact, and transporting or arranging the child's transportation to meet with legal counsel upon reasonable request, per OAC 340:75-6-89;

(17) utilizing the foster care maintenance payment for the care and maintenance of the child, per OAC

340:75-7-52 including, but not limited to, food, adequate clothing and possessions, and incidental expenses;

(18) providing federally mandated successful adulthood services to youth who are at least 14 years of age, per OAC 340:75-6-110;

(19) assisting the child younger than 14 years of age learn basic life skills, allowing him or her the opportunity to improve self-esteem and strengthen identity in preparation for life after foster care, per OAC 340:75-6-110; and

(20) maintaining and respecting the confidential nature of information regarding the child and the child's family. The resource parent does not identify the child or the child's family as a participant in a Child Welfare Services case when sharing a photo or information on any type of media or on any Internet site, per OAC 340:75-1-42.

(c) **Resource parent's responsibility to DHS.** The resource parent's responsibility to DHS includes:

(1) participating as a team member with DHS and the child's parent toward a permanency plan including, but not limited to:

(A) attending meetings and case staffings when requested;

(B) informing DHS and other team members of the child's strengths, needs, progress, and development; and

(C) providing DHS and other team members with any known family information;

(2) cooperating and assisting DHS to place siblings together;

(3) attending court hearings as desired or required;

(4) submitting written reports to the court when desired or requested;

(5) presenting testimony concerning the child's strengths, needs, behaviors, important experiences, and relationships in addition to other information the court requests;

(6) completing required training hours each year of service;

(7) maintaining a Life Book for each child placed in the resource home to support the child's sense of family continuity. The Life Book accompanies the child when he or she leaves the resource home; and

(8) notifying the resource specialist, per OAC 340:75-7-18:

(A) immediately of any:

(i) charges, arrests, or any alleged illegal activity committed by the applicant or any household member; or

(ii) proceeding for a protective order filed by, or against the applicant, or any household member; and

(B) within 24 hours of any change in the household including, but not limited to:

(i) the address or the home's location including emergency home displacement;

(ii) any significant change in the home that impacts the family's day-to-day living;

(iii) the death or serious illness of a resource parent;

(iv) health;

(v) income;

(vi) new or terminated relationships; or

(vii) household members moving in or moving out of the home for any reason.

PART 8. RESOURCE HOME CONTINUOUS QUALITY ASSESSMENT

340:75-7-94. Resource home annual updates, ~~reassessments,~~ non-compliance or rule violations, investigations, closures, and fair hearings

(a) **Annual update.** The resource family assessment is updated annually from the resource home's approval date in KIDS.

(b) ~~**Reassessment.** The reassessment review is conducted every three years from the resource home's approval date in KIDS or within 30 calendar days when the family is identified as the adoptive placement for the legally free child.~~

~~(c)~~ **Resource home non-compliance or rule violation issues.** When non-compliance or rule violation issues in the home require remediation for continued use of the home, a written plan of compliance is developed as a tool to address the safety and stability of the child in Oklahoma Department of Human Services (DHS) custody placed in the home.

(~~d~~c) **Resource home investigation.**

(1) When a Child Protective Services investigation results in removal of a child in DHS custody from the home:

(A) Form 04MP014E, Notice of Child's Removal from Out-of-Home Placement, is provided by the child welfare (CW) specialist, per Oklahoma Administrative Code (OAC) 340:75-6-86; and

(B) the resource parent receives Form 04MP031E, Notice of Decision Not to Return Child After Investigation, from the CW specialist when a decision is made not to return the child to the home.

(2) Per Section 1-9-119 of Title 10A of the Oklahoma Statutes, the resource parent has the right to request and receive a fair and impartial administrative hearing regarding decisions that affect certification, retention, or placement of a child in DHS custody in the resource home.

(~~e~~d) **Closure of the resource home.** The resource home is closed and the contract is terminated, when:

(1) resource home services are no longer needed;

(2) kinship children are no longer placed in the kinship resource home;

(3) the child leaves a resource home jointly-approved for that specific child;

(4) the child is no longer placed in the resource home approved for the specific child;

(5) the resource parent requests closure;

(6) the resource parent fails to timely implement or maintain compliance with provisions of Form 04AF023E, Written Plan of Compliance, to resolve conditions that

present a risk to the child or conditions that do not conform to the contract; ~~or~~

(7) there are non-compliance issues related to a rule, statute, contract, or a written plan of compliance that are unresolved including, but not limited to, failure of the resource parent or household member to meet or maintain the initial screening and requirements, per ~~340:75-7-12~~340:75-7-10.1 or maintain compliance with background requirements, per OAC 340:75-7-15; or

(8) rules, statutes, or contract violations by the resource parent or household member occurred that resulted in DHS determining the child to be unsafe in the resource home.

(~~f~~e) **Fair hearing.** When the approved resource home is closed, the resource parent has the right to appeal closure through the fair hearing process, per OAC 340:75-1-12.6.

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES

PART 1. THERAPEUTIC FOSTER CARE

340:75-8-6. Required protocol for therapeutic foster care contractors

Therapeutic foster care (TFC) contractors must:

(1) maintain a written case record on each child that documents all services provided or obtained for the child while in placement;

(2) implement and review an individualized treatment plan for each child in placement, with documented input from the child's assigned Child Welfare Services (CWS) specialist, according to the requirements set forth in the Oklahoma Department of Human Services (DHS) contract;

(3) assume responsibility for maintenance of basic needs of each child placed;

(4) accept responsibility for a reasonable knowledge of the child's whereabouts at all times.

(A) When a child:

(i) is removed by anyone without authorization;

(ii) is taken into custody by law enforcement officials;

(iii) ~~runs away~~is missing from care; or

(iv) otherwise cannot be accounted for, the TFC contractor immediately notifies, the:

(I) assigned CWS specialist or CWS supervisor. CWS staff follows protocol and completes ~~runaway~~missing from care notifications, per Oklahoma Administrative Code (OAC) 340:75-6-48.3; and

(II) local law enforcement with the child's physical description, last known location, any known possible locations, and the child's special needs that may enhance the urgency to locate the child. The TFC contractor contacts the TFC contract liaison for assistance when encountering any difficulty contacting the CWS specialist or CWS supervisor.

(B) The contractor submits a written incident report to the child's assigned CWS specialist describing the circumstances and files a copy in the child's case record;

(5) ensure the child receives all needed routine, specialized, and emergency medical care in a timely manner provided by a medical provider who accepts Medicaid payment.

(A) DHS authorizes the TFC foster parent and TFC administrator in writing, through the placement provider agreement, to consent to routine and ordinary medical care and treatment needed by the child in DHS custody upon the advice of a licensed physician, per OAC ~~340:75-6-88~~340:75-14-3.

(B) Prior consultation and consent from DHS, the child's parent(s) or guardian, and the court, when applicable, as set out by Section 1-3-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-3-102), are required for:

(i) emergency medical care. When appropriate DHS staff cannot be located and the situation is life-threatening, the provider obtains emergency care and treatment and notifies DHS at the earliest possible time; and

(ii) any extraordinary medical care and treatment, such as surgery, general anesthesia, blood transfusions, or invasive or experimental procedures requires consent of the:

(I) child's parent or guardian, when the child is in DHS emergency or temporary custody;

(II) court of jurisdiction, when the child is in DHS emergency or temporary custody, and the treatment is related to the abuse or neglect, or the parent or guardian is unavailable or will not consent; or

(III) court of jurisdiction, when the child is in DHS permanent custody.

(C) The provider must comply with DHS policy for the administration of prescribed psychotropic medication found in OAC ~~340:75-6-88~~340:75-14-3.

(D) The contractor agrees to immediately report all emergency medical care to the child's assigned CWS specialist and to document the manner of report and response in the child's case record. The contractor ensures that CWS specialists, parents, and guardians are advised of physician recommendations regarding the use of psychotropic medications and the contractor must comply with DHS policy, per OAC ~~340:75-6-88~~340:75-14-3. Neither DHS, a foster parent, nor TFC contractor staff may consent to a child in DHS custody undergoing an abortion or sterilization procedure, initiating termination of life support, or implementing a "do not resuscitate" order;

(6) notify the assigned CWS specialist or specialists and the TFC contract liaison of any accidental or non-accidental injuries sustained by the child, per OAC 340:75-3-400 and ~~340:75-6-88~~340:75-14-3;

(7) ensure the child's religious and cultural observances, practices, or beliefs comply with OAC 340:75-6-49;

(8) develop and implement written policy and procedures regarding each child's access to legal counsel, court-appointed special advocate (CASA), DHS staff, phone, email, mail, and visitation, per OAC 340:75-6-30 and 340:75-11-237. The policy must ensure the:

(A) child has the right to interact with the child's attorney, guardian ad litem, CASA, and DHS staff in a manner and setting assuring confidentiality;

(B) child's attorney, guardian ad litem, and CASA have the opportunity to meet with the child, observe the child in appropriate settings, including the child's current placement, and review the child's documents, reports, records, and other information relevant to the court case; and

(C) foster parent is advised of his or her right to submit a report to the court for presentation at the review hearing to assist the court in reviewing the child's placement and status;

(9) develop and implement written policy and procedures regarding the maintenance and safeguarding of each child's clothing, personal items, property, and funds while placed;

(10) ensure the completion of a clothing and personal item inventory for each child entering and leaving placement and ensure each child leaves the placement with all of his or her clothing and personal items;

(11) obtain prior approval from the CWS county of jurisdiction specialist any time the child travels overnight outside of the county of placement or Oklahoma, per OAC 340:75-6-89;

(12) not secure any placement without the prior planning and documented written approval of the CWS specialist.

(13) when the TFC contractor utilizes volunteers, policy for approval and use of volunteers must, at a minimum, require criminal history and sex offender registry checks;

(14) develop and implement written policy and procedures that prohibit the utilization of any child in DHS custody for commercial purposes;

(15) submit written reports to the child's CWS county of jurisdiction specialist or specialists describing the child's stay in placement, progress toward meeting the identified treatment plan, education, and medical care as requested for court hearings, and file a copy of the reports in the child's case record;

(16) develop and implement written policy and procedures for discipline that comply with OAC 340:75-7-38 and ~~Sections 1-7-105 of Title 10A of the Oklahoma Statutes (~~10A O.S. § 1-7-105~~)~~;

(17) ensure each employee and TFC parent is trained in an approved passive physical restraint curriculum defined in OAC 340:75-11-237;

(18) develop and implement written policy and procedures requiring the TFC contractor, and all employees of the contractor, having a reason to believe any child in placement has been subject to abuse or neglect to report the matter to the Oklahoma Child Abuse and Neglect Hotline the same day of the incident. Failure to report is a misdemeanor and failure to report with prolonged knowledge is a felony, per 10A O.S. § 1-2-101;

(19) develop and implement written policy that prohibits possession or use of tobacco and tobacco products by any child in placement, and prohibits the use of tobacco or tobacco products by employees of the TFC contractor in the presence of any child in placement;

(20) develop and implement written policy and a system for resolution of grievances by any child placed and by the TFC parent regarding the substance or application of any written or unwritten policy or rule, decision, act, or omission of the TFC contractor, or employees or agents of the contractor, per OAC 340:2-3-49 and 340:2-3-50;

(21) afford the TFC parent the same rights as all foster parents in Oklahoma, per 10A O.S. § 1-9-119;

(22) develop and implement written policy and procedures regarding communicable disease, per OAC 340:75-1, Part 9;

(23) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace, per the Drug-Free Workplace Act of 1988;

(24) develop and implement written policy and procedures to maintain confidentiality with regard to children in placement to comply with DHS rules regarding the protection, use, and release of client information, per 10A O.S. § 1-6-102 and Part 3 of OAC 340:75-1;

(25) plan and coordinate each child's discharge with the child's CWS assigned specialist or specialists, when different, and provide a minimum of 72-business hours notice to discharge, except in medical or psychiatric emergencies. On-site crisis intervention must be provided prior to any emergency discharge~~.~~;

(26) submit a written discharge summary to the child's CWS specialists within 30-calendar days of the child's discharge and file a copy in the child's case record. The discharge summary includes:

(A) a summary of treatment services;

(B) child's progress on the treatment plan;

(C) reason for discharge; and

(D) recommendations for future placements and services for the child's treatment needs;

(27) ensure compliance with:

(A) minimum licensing standards per Child Care Services licensing standards for child-placing agencies; and

(B) staffing requirements, per DHS Placement Agreement for TFC;

(28) develop and implement written policy and operating procedures regarding corrective discipline procedures for employees;

(29) ensure the foster parent maintains a current Life Book for each child, regardless of the child's age that documents the child's stay in care, and provides continuity throughout the child's life, per OAC 340:75-7-37;

(30) develop and implement written policy and operating procedures to govern the foster parent's maintenance and administration of prescription and non-prescription medication to each child in placement, including transporting prescription and non-prescription medication when the child receives medication any place other than the TFC home, such as respite placements, family visits, and medication administered during school hours;

(31) develop written policy and operating procedures regarding the use of physical force for behavior management of any child placed.

(A) The use of mechanical restraints and the use of medication for behavior management are prohibited in the care and treatment of the child in DHS custody.

(B) The use of physical force is permitted when it is necessary for the protection of the child or others consistent with an approved passive physical restraint curriculum, such as when the child's behavior poses an immediate danger or threat of danger to self or others and other methods have been exhausted;

(32) develop and implement written policy, operating procedures, and supervision guidelines regarding the use of solitary confinement and separation programs, such as restricting the child to his or her own room for a cooling off period. The duration of room restriction is specified at the time of assignment and is consistent with the child's chronological age, developmental level, behavioral, emotional, and medical needs, and availability of supervision;

(33) for each scheduled review hearing, coordinate with the CWS specialist and the foster parent for a youth 14 through 17 years of age to ensure the youth's availability to respond to the court's inquiry, in person, by phone, or by other electronic means, about the youth's plan for skills development and transition to successful adulthood;

(34) assist the CWS specialist and foster parent with ensuring youth in the eighth, ninth, or tenth grades are enrolled in the Oklahoma's Promise, formerly known as the Oklahoma Higher Learning Access Program or OHLAP, and provide foster parents with information on eligibility, application guidelines, and academic requirements for the program; and

(35) for any youth 16 years of age or older, assist the CWS specialist and youth, as needed, to remedy concerns of identity theft or fraudulent use of the youth's identity noted through a review of the youth's credit report provided by DHS.

340:75-8-12. ~~Responsibilities~~Placement responsibilities of therapeutic foster care (TFC) ~~coordinators~~program staff

TFC contractors receive referrals for the placement of children in Oklahoma Department of Human Services custody or tribal custody in TFC homes from ~~the~~ TFC ~~placement coordinator or other entity designated by TFC~~ program staff. ~~The~~ TFC ~~placement coordinator~~program staff is responsible for the referral process of children to TFC contractors.

SUBCHAPTER 11. CHILD WELFARE COMMUNITY-BASED RESIDENTIAL CARE

PART 17. CONTRACTED COMMUNITY-BASED RESIDENTIAL CARE PROVIDERS

340:75-11-240. General requirements for contracted community-based residential care (CBRC) placement providers

All contracted CBRC providers must:

(1) maintain a written case record on each child that documents all services provided or obtained for the child while in placement;

(2) implement and review an individualized treatment plan for each child in placement, with documented input from the child's assigned child welfare (CW) specialist, according to the requirements set forth in the Oklahoma Department of Human Services (DHS) contract;

(3) assume responsibility for basic needs maintenance of each child placed;

(4) ensure the safety, supervision, protection, and provision of necessary medical or psychological care and treatment for each child receiving services from the facility or provider is individualized to the child's specific needs. The placement provider or facility must cooperate with any inspection, investigation, evaluation, plan for immediate safety, or corrective action plan made by DHS or the Office of Client Advocacy and provide all ongoing assistance necessary to ensure child safety, protection, and well-being;

(5) accept responsibility for a reasonable knowledge of the child's whereabouts at all times.

(A) When a child:

(i) is removed by anyone without authorization;

(ii) is taken into custody by law enforcement officials;

(iii) ~~runs away~~is missing from care; or

(iv) otherwise cannot be accounted for, the provider immediately ~~notifies by phone~~ phones the:

(I) child's assigned CW specialist. The child's CW specialist follows protocol and completes ~~runaway~~missing from care notifications, per Oklahoma Administrative Code (OAC) 340:75-6-48.3;

(II) CW facility liaison; and

(III) law enforcement.

(B) The provider submits a written report to the child's assigned CW specialist describing the circumstances surrounding the incident and files a copy in the child's case record;

(6) ensure the child timely receives all needed routine, specialized, and emergency medical care provided by a medical provider who accepts Medicaid payment.

(A) DHS authorizes the CBRC facility administrator in writing, through the placement provider agreement, to consent to routine and ordinary medical care and treatment needed by the child in DHS custody ~~child~~ upon the advice of a licensed physician, per OAC ~~340:75-6-88~~340:75-14-3.

(B) Prior consultation and consent from DHS, the child's parent(s) or guardian, and the court, when applicable, as set out by Section 1-3-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-3-102), are required for:

(i) emergency medical care. When appropriate DHS staff cannot be located and the situation is life-threatening, the provider obtains emergency care and treatment and notifies DHS at the earliest possible time; and

(ii) any extraordinary medical care and treatment, such as surgery, general anesthesia, blood transfusions, or invasive or experimental procedures requires consent of the:

(I) child's parent or guardian, when the child is in DHS emergency or temporary custody;

(II) court of jurisdiction, when the child is in DHS emergency or temporary custody, and the treatment is related to the abuse or neglect, or the parent or guardian is unavailable or will not consent; or

(III) court of jurisdiction, when the child is in DHS permanent custody.

(C) The provider must comply with DHS policy for the administration of prescribed psychotropic medication found in OAC ~~340:75-6-88~~340:75-14-3.

(D) Provision of all medical or dental care is documented in the provider's case record, including notification and attempts of notification in emergency situations;

(7) notify the assigned CW specialist and the CW facility liaison of any accidental or non-accidental injuries sustained by the child;

(8) ensure that the religious and cultural observations of the child comply with OAC 340:75-6-49.

(A) The provider arranges transportation to the nearest place of worship of the child's choice. On-site voluntary religious services are acceptable.

(B) Exceptions to this requirement are made for non-funded contracts with CBRC providers that require the child's and parent(s)' agreement for the child to attend a specific place of worship as a requirement for admission;

(9) develop and implement written policy and procedures regarding each child's access to legal counsel, court-appointed special advocate, DHS staff, phone, email, mail, and visitation, per OAC 340:75-11-237;

(10) develop and implement written policy and procedures regarding securing and safeguarding each child's property and funds, the disbursement of allowances, and items allowed and not allowed into the placement;

(11) ensure each child is discharged with all personal items and clothing;

(12) obtain prior approval from the assigned CW specialist any time the child travels overnight outside of the county of placement per OAC 340:75-6-89;

(13) develop and implement written policy and procedures defining situations in which any person, other than family members previously approved by the assigned CW specialist, may take the child away from the placement on a day pass, not to exceed six hours, without supervision of the provider. The provider:

(A) does not allow a child any overnight visitation, except with peers, per OAC 340:75-7-37, without prior planning and documented written approval of the child's assigned CW specialist;

(B) does not secure any placement without prior planning and documented written approval from the child's assigned CW specialist; and

(C) when utilizing volunteers, ensures the provider's policy for approval and utilization of volunteers complies with OAC 340:2-35-4;

(14) develop and implement written policy and procedures that prohibit the utilization of children for commercial purposes;

(15) submit written reports to the child's assigned CW specialist describing the child's stay in placement, progress toward meeting identified treatment goals, education, and medical care on a quarterly basis, or more frequently when requested for court hearings, and file a copy of the reports in the child's case record;

(16) develop and implement written policy and procedures for discipline that comply with OAC 340:75-7-38, and 10A O.S. § 1-7-105 that prohibit the use of solitary confinement, separation programs, use of mechanical restraints, and administration of medicine as discipline or control.

(A) Room restriction may be utilized in the child's own room for a cooling off period not to exceed 60 minutes.

(B) The duration of the restriction is specified at the time of the assignment;

(17) ensure all employees are trained in an approved, non-pain producing, passive, positive youth development curriculum, per OAC 340:75-11-237;

(18) develop and implement written policy and procedures that require the contractor, and all employees of the contractor, having reason to believe any child in placement ~~has been~~was subjected to physical abuse, neglect, or both, to report the matter to the DHS Child Abuse and Neglect Hotline (Hotline).

(A) The provider makes the report to the Hotline the same day of the incident or on the date the incident becomes known to the provider.

(B) Failure to report is a misdemeanor offense, failure to report with prolonged knowledge is a felony, and upon conviction~~,~~ is punishable, per 10A O.S. § 1-2-101;

(19) develop and implement written policy that prohibits:

(A) possession of or use of tobacco and tobacco products by children in placement; and

(B) use of tobacco or tobacco products by the provider, employees of the provider, or visitors in the presence of children in placement;

(20) develop and implement written policy and procedure for the resolution of grievances by recipients of the services provided under the contract regarding the substance or application of any written or unwritten policy or rule of the contractor, or any decision, act, or omission of the contractor, or employees or agents of the contractor. The contractor:

(A) utilizes a grievance system in compliance with OAC 340:2-3-45 through 340:2-3-47 and 340:2-3-61 through 340:2-3-64; and

(B) submits policy regarding the resolution of grievances, and any subsequent revisions, to the Office of Client Advocacy for approval prior to the placement of any child, per OAC 340:2-3-45;

(21) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988;

(22) develop and implement written policy and procedures to maintain strict standards of confidentiality regarding children in placement in compliance with DHS requirements regarding the absolute protection, use, and release of personal client information consistent with 10A O.S. § 1-6-107 and OAC 340:75-1-42 through 340:75-1-46, and professional standards. The contractor agrees to hold confidential all personal information about children served, including lists of names, addresses, photographs, records of evaluation, and all other records about each child;

(23) submit monthly and annual reports to Child Welfare Services (CWS) Specialized Placements and Partnerships Unit (SPPU) program staff to provide an overview of the provider's activities.

(A) The monthly report includes:

(i) information on each child's progress toward goals and objectives;

(ii) significant behavior events, including descriptions of delinquent acts committed and the legal and judicial consequences of the delinquent acts committed by each child;

(iii) each child's unapproved absence from the facility and duration of the time away;

(iv) total bed days utilized;

(v) each child's leave days utilized;

(vi) total number of children served during the month, the number of children served who are also adjudicated delinquent, and the total number of children served who are adjudicated delinquent and in the custody of Office of Juvenile Affairs;

(vii) number of children admitted during the month;

(viii) number of children discharged during the month and the reasons for those discharges; and

(ix) vacancies in contract mandated staffing requirements, and other significant program events.

(B) The annual report, due within 60-calendar days after the end of the contract year, includes the information listed in (A) of this paragraph for the contract year;

(24) plan and coordinate each child's discharge with the assigned CW specialist and provide a minimum 48-hour notice to discharge, except in medical or psychiatric emergencies. Contractor's recommendation for discharge is approved by the assigned CW specialist prior to the provider's implementation of the discharge plan;

(25) submit a written discharge summary to the assigned CW specialist within 30-calendar days of discharge and file a copy in the child's case record, including a summary of treatment services, child's progress on treatment goals, reason for discharge, and recommendations for future placements and services for the child's treatment needs;

(26) ensure all staff comply, as applicable, with the minimum licensing standards defined in the Child Care Services licensing standards for child care facilities or DHS Publication No. 86-78, Licensing Requirements for Residential Child Care Facilities;

(27) ensure all staff comply with the staffing requirements mandated in the contract that are in addition to the minimum staffing requirements in DHS Publication No. 86-78. When the provider's actual staffing ratio differs from the requirements set forth in the contract, the provider submits a written plan to CWS SPPU program staff that defines the proposed staffing pattern of the contractor, timeframe for the differing ratio, and clearly illustrates how each of the staffing functions is provided;

(28) fill vacant positions required by the DHS contract within 30-calendar days of the position becoming vacant. The contractor notifies CWS SPPU program staff in writing:

(A) when contractually required positions are vacant;

(B) of updates during the selection process; and

(C) of the effective hiring date for these positions;

(29) develop and implement written policy regarding corrective discipline for employees;

(30) notify CWS SPPU program staff immediately by phone, and in writing within one business day, per OAC 340:110-3-152(f), of any critical incidents, such as:

(A) the death of a child;

(B) the death of an employee caused by murder, suicide, or accident;

(C) severe injury to a child as a result of abuse, neglect, or maltreatment by a service provider, employee, another child, or accident;

(D) misappropriation of state or federal funds by an employee of a private or public service agency that receives these funds;

(E) a violent crime committed by a child against another person; or

(F) any event that occurs in the facility that gains or is likely to gain media attention;

(31) provide an on-site educational program, when required by terms of the DHS contract and provide a 60-calendar day notice to the local school board prior to the opening of the facility per 70 O.S. § 1-113; and

(32) maintain a current Life Book, in a format separate from the provider's case record, for each child placed, regardless of the child's age that documents the child's stay in care and provides continuity throughout the child's life, per OAC 340:75-7-37. The provider:

(A) when the child's Life Book is not provided by the child's assigned CW specialist, initiates and maintains a Life Book with current information about the child while in placement including, but not limited to:

(i) placement name and address;

(ii) date of admission and discharge;

(iii) educational history;

(iv) medical history;

(v) awards and achievements;

(vi) photographs; and

(vii) family information; and

(B) gives the Life Book to the child and the child's assigned CW specialist when the child is discharged; and

(33) ensure that at least one employee of the facility is designated and authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child in age-appropriate or developmentally-appropriate activities and the authorized employee is provided with training on how to use and apply the reasonable and prudent parent standard.

SUBCHAPTER 12. OKDHS OPERATED GROUP HOMES [REVOKED]

340:75-12-1. General description [REVOKED]

~~(a) The Oklahoma Department of Human Services (OKDHS) operated group homes are residential facilities that emphasize family style living in a home-like environment. The group homes provide full-time care to residents. The homes comply with the licensing standards and requirements of the Division of Child Care. Group home staff assists the youth in developing parenting skills and learning independent living skills.~~

~~(1) The Pauline E. Mayer group home serves a maximum of five adolescent mothers, 13 through 17 years of age, who are adjudicated deprived and in OKDHS custody, and their children. Referrals for placement are made to the group home supervisor.~~

~~(2) The Deborah A. Rothe group home serves a maximum of eight girls, 13 through 17 years of age, who are adjudicated deprived and in OKDHS custody. Referrals for placement are made to the Placement Section of Children and Family Services Division (CFSD).~~

~~(b) Both OKDHS operated group homes are structured, community-based settings for youth who require a high degree of individualized supervision and service provision. These group home programs are designed to serve youth in OKDHS custody who demonstrate significant behavior problems.~~

~~(c) The OKDHS operated group homes provide or arrange services for residents that include:~~

~~(1) individual and group counseling;~~

~~(2) medical and dental services;~~

~~(3) educational and vocational services;~~

~~(4) recreation;~~

~~(5) independent living skills;~~

~~(6) social work services;~~

~~(7) nutrition, clothing, and shelter;~~

~~(8) family visitation;~~

~~(9) transportation; and~~

~~(10) basic child care.~~

340:75-12-2. Legal base [REVOKED]

~~The group homes have been established pursuant to Section 7004-3.1 of Title 10 of the Oklahoma Statutes.~~

340:75-12-3. Medical services [REVOKED]

~~(a) **Medical and health care.** Each group home maintains access to a licensed physician, clinic, or hospital for 24-hour emergency services as well as routine medical services. Access to dental services is provided. As legal custodian of the residents, the Department of Human Services (DHS) has authority to provide consent for medical services. [10 O.S. § 7003-7.1 and 7004-1.1A.1(f)] The resident's Child Welfare (CW) worker is notified of all medical treatment required by the resident.~~

~~(b) **Emergency medical services.** First aid supplies are available in the group homes. Each group home has written emergency medical plans which are communicated to the staff and residents of the group homes during their respective orientations to the home.~~

~~(c) **Administration of medication.** All medications are secured and under the supervision of designated group home staff. Designated staff dispenses all medication. Each group home has written procedures for the administration, monitoring, storing, and disposal of all medications. [OAC 340:110-3-154.3(e)]~~

340:75-12-4. Preparation for adult life [REVOKED]

~~The group homes are designed to promote self-reliance and the development of daily living skills of residents. Each resident participates in the preparation for adult life activities provided by the group home staff. Preparation for adult life activities are designed to:~~

~~(1) improve self-concept;~~
~~(2) increase the resident's decision-making skills and sense of personal control;~~
~~(3) expose residents to educational and vocational options;~~
~~(4) develop skills in personal financial management, accessing educational opportunities, use of community leisure resources, and obtaining and maintaining employment;~~
~~(5) provide information concerning human sexuality and parent effectiveness;~~
~~(6) provide each resident a birth certificate, school and medical records, and other documents necessary for independent adult living; and~~
~~(7) provide a Life Book to residents who enter the group home without one.~~

340:75-12-5. Behavior management of residents [REVOKED]

~~The purpose of the behavior management system in Child Welfare (CW) group homes is to maintain the safety of the residents, allow the orderly operation of the home, and encourage the growth of self-discipline within each resident. The group home staff use a written point system to determine the gain, loss, and restriction of resident privileges.~~

~~(1) **Restriction of privileges.** Staff may restrict a resident's privileges for serious violations of the group home's rules. Contact with immediate family, CW worker, or attorney is not restricted.~~
~~(2) **Room restriction.** If an adolescent resident's behavior is dangerous to others, a resident may be restricted to her unlocked bedroom for a "cooling off" period. During room restriction, direct care specialist (DCS) staff observe the resident at least once every 15 minutes. Room restriction does not exceed one hour and is terminated earlier when the resident regains self-control.~~
~~(3) **Restriction requirements.** Prior to any restriction, staff explain the reasons for and the length of the restriction. The resident is provided an opportunity to explain the behavior that led to the restriction. Restriction of privileges is never for an indeterminate time. All restrictions are documented.~~

340:75-12-6. Searches [REVOKED]

~~(a) Room searches are conducted when there is a reasonable belief that a resident is concealing:~~
~~(1) something which may result in harm to self or others, including drugs or weapons;~~
~~(2) evidence of unlawful behavior; or~~
~~(3) possession of a contraband item which violates group home rules.~~
~~(b) The group home supervisor approves all searches. Residents are encouraged to cooperate. All searches by staff are conducted in a manner to minimize discomfort and embarrassment to residents. All searches and their findings are documented. Unless the group home supervisor determines that an emergency exists, bedroom searches require the presence of the resident(s) of the room.~~

340:75-12-7. Resident rights [REVOKED]

~~Each group home provides residents respectful treatment and rights as listed in OAC 340:110-3-154.1(a).~~

340:75-12-8. Resident mail and phone communication [REVOKED]

~~(a) Group homes provide residents with writing materials and postage. Resident mail is not opened unless there is a suspicion of contraband. If the resident's mail is opened the resident is informed in advance and is present when the mail is opened. The action is documented. [OAC 340:110-3-154.1(a)(3)(G)]~~
~~(b) Each group home has written procedures for resident use of the telephone for uncensored personal phone calls. [OAC 340:110-3-154.1(a)(3)(F)]~~

340:75-12-9. Resident funds [REVOKED]

~~(a) **Resident funds.** Each group home encourages the deposit of resident personal funds into savings accounts.~~
~~(b) **Resident allowances.** Residents of Oklahoma Department of Human Services operated group homes are provided a monthly allowance of $25. Residents of the Pauline E. Mayer group home are provided an additional $10 per month for each of their children.~~

340:75-12-10. Education and employment [REVOKED]

~~Group home residents must be enrolled in school or vocational training programs available in the community. When directed by the case plan, a resident is allowed to seek employment in the community. The group home staff train the residents how to apply and interview for a job.~~

340:75-12-11. Absent without leave [REVOKED]

~~A resident is considered absent without leave (AWOL) when absent from the group home without the permission of staff. The group home staff notifies the resident's Child Welfare (CW) worker and law enforcement. When a resident remains AWOL for five days, the group home supervisor terminates the resident's placement in the group home and notifies the resident's CW worker. The group home staff secures the AWOL resident's belongings for safekeeping. If the placement is terminated, the belongings are sent to the child's CW worker.~~

340:75-12-12. Use of physical force [REVOKED]

~~(a) **When force is authorized.** Per Section 7004-3.3 of Title 10 of the Oklahoma Statutes group home staff are authorized to use physical force:~~
~~(1) for self-protection;~~
~~(2) to separate children who are fighting;~~
~~(3) to restrain children in danger of inflicting harm to themselves or others; and~~

~~(4) to deter children who are in the process of leaving the facility without authorization.~~

~~(b) **Non-physical de-escalation methods first.** The use of physical force is preceded by reasonable efforts to exercise authority by alternative means, such as physical presence, gesture skills, and verbal interventions if possible.~~

~~(c) **Using the least force necessary.** When physical force is used, the least force necessary under the circumstances is employed. Use of excessive force may result in employee disciplinary action. The physical restraint techniques in behavior management training are used.~~

~~(d) **Unauthorized use of force.** Group home staff do not engage in unauthorized use of force nor encourage or knowingly permit any person to use unauthorized force against a resident. Unauthorized use of force may result in employee disciplinary action, including discharge from employment. Unauthorized force includes:~~

~~(1) use of force as a punishment, sanction, or as a retaliatory response;~~

~~(2) threatening a resident with physical force which is unauthorized if used; and~~

~~(3) provoking a physical confrontation by taunting, harassing, or cursing a resident, or otherwise manipulating a resident to engage in activities which justify the use of physical force.~~

~~(e) **Prohibited restraints.** Group home staff are prohibited from using mechanical restraints to control a resident.~~

340:75-12-13. Maltreatment of group home residents [REVOKED]

~~Department of Human Services (DHS) rules prohibit the abuse, neglect, or maltreatment of group home residents and provide for employee disciplinary action of any staff who engage in these activities. DHS rules require employees to report any suspected abuse, neglect, or maltreatment of children residing in a group home. Group home staff receive training in DHS policy concerning their responsibility to report abuse, neglect, or maltreatment of residents. [OAC 340:2-3-33]~~

340:75-12-14. Resident grievances [REVOKED]

~~The Department of Human Services (DHS) has a complaint resolution process designed to ensure fair consideration of complaints made by or on behalf of children in the custody of DHS. This grievance process may be utilized by group home residents. When a child is admitted to the group home, the group home Child Welfare specialist conducting the intake informs the child of this grievance system. If a child files a grievance, resolution protocol is followed as stated in OAC 340:2-3-48.~~

340:75-12-15. Emergency plans [REVOKED]

~~Child Welfare operated group homes have plans for the protection of all persons in the home in the event of fire, severe weather, or medical emergencies. The plans include evacuation of the group home when necessary. All group home staff are trained to carry out their duties in the event of an emergency. Emergency plan drills are conducted periodically.~~

340:75-12-16. Discharge [REVOKED]

~~Discharge of a resident from a group home is a planned process. The process is coordinated by the group home Child Welfare specialist and the resident's Child Welfare worker. The resident is kept informed of the plans.~~

SUBCHAPTER 13. OTHER CHILD WELFARE SERVICES AND MEDICAL SERVICES FOR CHILDREN IN OUT-OF-HOME CARE

PART 7. MEDICAL SERVICES

340:75-13-61. Medical services to children in placement

Children in Oklahoma Department of Human Services ~~(OKDHS)~~ custody and out-of-home placements have fee-for-service medical cases. The Oklahoma Health Care Authority pays for each medical service provided at the Medicaid allowable rate. The ~~CW worker~~child welfare specialist:

(1) ensures medical services are provided, per OAC ~~340:75-6-88~~340:75-14-3;

(2) informs the placement provider of medical service providers who are eligible for payment through medical resources;

(3) applies for Medicaid for a child within five-business days of the filing of the petition that results in the child's removal from the home; and

(4) notifies the placement provider of the child's medical number and person code upon receipt to facilitate medical services and payment.

SUBCHAPTER 14. WELL-BEING

340:75-14-1. Purpose, definitions, and assessment

(a) **Purpose.**

(1) A child's well-being is comprised of four basic domains:

(A) cognitive functioning;

(B) physical health and development;

(C) behavioral/emotional functioning; and

(D) social functioning.

(2) A child's well-being is dependent upon the caretaker's ability to meet the child's physical health, learning and development, behavioral health, and the child's ongoing opportunities to engage in age- or developmentally-appropriate activities following the reasonable and prudent parent standard.

(3) The child welfare (CW) specialist assesses:

(A) child functioning that includes the specific indicators of child well-being. An assessment of child functioning is the basis for understanding how the caregiver addresses any specific child needs and is a central component of promoting well-being for children who have experienced abuse or neglect; and

(B) a child's needs in these areas throughout the case process and addresses identified needs as part of case planning activities.

(4) Children and families are meaningfully engaged in all aspects of the service process to build and maintain a trusting, supportive working relationship.

(5) A trauma-informed framework of well-being puts together assessments, interventions, actions, and supports that are intentional and inclusive of a deeper understanding of the four basic domains of a child's well-being through a trauma-informed lens.

(6) Children engaged by the CW system, especially those who were removed from their birth families, have likely experienced traumatic events in their lives, thereby impacting their development and overall well-being.

(A) A removal leading to the separation of the family, in and of itself, can cause trauma.

(B) Children's relationships, behaviors, and sense of self may all be impacted.

(C) Adverse effects of trauma may be immediate or have a delayed onset.

(D) Not all children who are involved in or witness traumatic events develop traumatic stress responses. Some children are able to adapt and cope with trauma better than others, especially when intervention is early.

(b) **Equal access.** Children engaged by the child welfare system have the right to fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or Human Immunodeficiency Virus (HIV) status.

(c) **Definitions.** Per Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105) the following words and terms, when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Age-appropriate"** or **"developmentally-appropriate"** means:

(A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child.

(2) **"Behavioral health"** means mental health, substance use or abuse, or co-occurring mental health and substance use or abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance use or abuse treatment.

(3) **"Child behavioral health screener"** means a brief measuring tool designed to screen for the presence of behavioral and trauma-related symptoms that may be negatively impacting child function in children ages birth through 17 years old. It additionally has questions geared to track counseling progress and psychotropic medication management.

(4) **"Child with disability"** means any child who has a physical or mental impairment that substantially limits one or more of the child's major life activities or who is regarded as having such impairment by a competent medical professional.

(5) **"Infant"** means a child 12 months of age and younger.

(6) **"Psychotropic medications"** means medications with well-demonstrated efficacy in the treatment of mental disorders through the modification of behavior, mood, and emotions.

(7) **"Reasonable and prudent parent standard"** means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities. For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care was placed, a representative of a group home where a child was placed, or a designated official for a residential child care facility where a child in foster care was placed.

(8) **"Trauma"** means what happens to a child that results from an event, series of events, or set of circumstances experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.

(9) **"Successful adulthood program"** means a program specifically designed to assist a child in Oklahoma Department of Human Services (DHS) custody or tribal custody in developing and enhancing the skills and abilities necessary for successful adult living, per 10A O.S. § 1-9-107.

(10) **"Youth"** means a child 13 through 17 years of age.

(d) **Child functioning.**

(1) **Description.** Child functioning is concerned with describing the child's general behavior, emotions, temperament, development, academic status, physical capacity, and health status. It addresses how a child functions from day-to-day and their current status rather than focusing on a specific point in time. An assessment of child functioning must take into account the age of the child and/or any special needs or developmental delays.

(2) **Child functioning indicators.**

(A) **Emotion/trauma.** The degree to which, consistent with the child's age, ability, and developmental level, an adequate pattern of appropriate self-management of emotions is displayed.

(B) **Behavior.** The degree to which, consistent with the child's age, ability, and developmental level,

an appropriate coping and adapting behavior is displayed.

(C) **Developmental/early learning.** Consistent with age and ability expectations, the child is achieving milestones based on his or her age and developmental capacities.

(D) **Academic status.** The child, according to age and ability, is:

(i) actively engaged in instructional activities and reading at grade level or an Individualized Education Program (IEP) expectation level; and

(ii) meeting requirements for annual promotion and course completion leading to a high school diploma or equivalent or vocational program.

(E) **Positive peer/adult relationships.** The child, according to age and ability, demonstrates adequate positive social relationships.

(F) **Family relationships.** The child demonstrates age and developmentally-appropriate patterns of forming relationships with family members.

(G) **Physical health.** The child is achieving and maintaining positive health status that includes physical, dental, audio and visual assessments and services. When the child has a serious or chronic health condition, he or she is achieving the best attainable health status given the diagnosis and prognosis.

(H) **Cultural identity.** Important cultural factors, such as race; class; ethnicity; religion; gender, gender identity, and sexual orientation; and other forms of culture are appropriately considered in the child's life.

(I) **Substance awareness.** The assessment of substance awareness is multi-dimensional. The assessment:

(i) includes the child/youth's awareness of alcohol and drugs, and his or her own use; and

(ii) for children who have experienced the negative impacts of parent/caregiver substance use or abuse within their home, includes their awareness of alcohol and drugs and treatment/recovery for their parent/legal guardian(s), as age appropriate.

(J) **Preparation for adult living skills development.** The child, according to age and ability, is gaining skills, education, work experience, long-term relationships and connections, income, housing, and other capacities necessary for functioning upon adulthood; and includes access to age-appropriate, medically-accurate information about reproductive health care, pregnancy prevention, and the prevention and treatment of sexually-transmitted infections at 12 years of age and older.

(e) **Screenings and functional assessments.** Screening and functional assessment tools are used to inform decisions about appropriateness of evidence-informed services. All children, birth through 17 years of age, engaged with Child Welfare Services have access to screening and functional assessments for the early and ongoing identification of well-being needs.

340:75-14-3. Medical services for the child in Oklahoma Department of Human Services (DHS) custody

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

(1) **"Consent"** means obtaining approval from a person for the procedure after providing an explanation of the necessity for the procedure involved, any known risks involved and, when appropriate, any alternative course of care.

(A) **"Informed consent"** means voluntary written consent from a person who received full, accurate, and sufficient information and explanation about a child's medical condition, medication, and treatment to enable the person to make a knowledgeable decision without being subjected to any deceit or coercion.

(B) **"Separate and specific consent"** means a licensed physician, psychiatrist, or other medical professional recommended a treatment or medication and requires an additional consent form provided by the professional be signed to authorize the treatment to occur or medication to be administered.

(C) **"Sufficient explanation"** means information provided and explained in plain language by the prescribing physician or physician's representative to the consent-giver including, but not limited to, the:

(i) medical care and treatment or the medication;

(ii) reason for prescribing the treatment or medication and the medication's purpose or intended results;

(iii) side effects, risks, and contraindications including the effects of stopping the medication;

(iv) method for administering the treatment or medication and dosage range, when applicable;

(v) potential drug interactions;

(vi) alternative treatments;

(vii) behavioral health or other services used to complement the use of the psychotropic medication, when applicable; and

(viii) other treatment interventions considered by the physician that may include, but are not limited to, medical, mental health, behavioral, counseling, or other services.

(2) **"DHS custody"** means a child is in the voluntary, emergency, temporary, or permanent custody of DHS.

(3) **"Medical" care** or **"treatment"** means, per Section 1-3-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-3-102) medical care or treatment that is either extraordinary or routine and ordinary.

(A) Extraordinary medical care and treatment includes, but is not limited to:

(i) surgery;

(ii) general anesthesia;

(iii) blood transfusions; or

(iv) invasive or experimental procedures.

(B) Routine and ordinary medical care and treatment does not include any type of extraordinary care or treatment and includes, but is not limited to:

(i) any necessary medical and dental examinations and treatments;

(ii) medical screenings;

(iii) clinical laboratory tests;

(iv) blood testing;

(v) preventative care;

(vi) health assessments;

(vii) physical examinations;

(viii) immunizations;

(ix) contagious or infectious disease screenings;

(x) tests and care required for treatment of illness and injury including x-rays, stitches, and casts; or

(xi) the provision of psychotropic medication.

(4) **"Placement provider"** means the person, foster parent, or administrator of a facility providing out-of-home care for a child in DHS custody.

(5) **"Psychotropic medications"** means medications with well-demonstrated efficacy in the treatment of mental disorders through the modification of behavior, mood, and emotions.

(b) **Medical services for the child in DHS custody in out-of-home care.** DHS is required to provide medical care necessary to preserve the child's health, per Oklahoma Children's Code provisions, 10A O.S. § 1-7-103. The child in DHS custody receives:

(1) Early Periodic, Screening, Diagnosis, and Treatment (EPSDT) screening according to the schedule of frequency or at a minimum, an annual physical exam. In addition, DHS provides, as soon as practicable after the filing of the petition, an initial health screening for each child placed in DHS emergency custody, to identify any health problems requiring immediate treatment, diagnosis of infections and communicable diseases, and an evaluation of injuries or other signs of abuse or neglect.

(2) a yearly behavioral health or developmental screening, and when recommended a behavioral health or developmental assessment, within 60-calendar days of the screening;

(3) a yearly dental exam when the child is over 3 years of age. A child under 3 years of age receives dental services as needed;

(4) an initiation of immunizations that are kept current;

(5) a visual and hearing evaluation exam and corrective lenses or hearing aids, when indicated;

(6) outpatient or inpatient behavioral mental health treatment, when appropriate;

(7) physician's services when the child is sick. This service is not considered a physical exam;

(8) contagious or infectious disease screenings, including Human Immunodeficiency Virus (HIV) exams or testing, are provided as needed or upon request by a placement provider in a manner consistent with the Centers for Disease Control guidelines for time and testing frequency, per Oklahoma Administrative Code 340:75-1-113; and

(9) follow-up and referral services as recommended by a qualified professional.

(c) **Consent for medical services.**

(1) **DHS authority to consent to routine and ordinary medical care and treatment.**

(A) DHS may consent to routine and ordinary medical care and treatment when the child is in DHS custody. DHS makes reasonable attempts, per 10A O.S. § 1-3-102, when the child is in voluntary, emergency, or temporary custody to:

(i) notify the child's parent or legal guardian of the provision of routine and ordinary medical care and treatment; and

(ii) keep the parent or legal guardian involved in the care.

(B) DHS may authorize the placement provider, in writing, through the placement provider agreement, to consent to routine and ordinary medical care and treatment needed for the child upon the advice of a licensed physician, including psychotropic medication.

(2) **Consent for extraordinary medical care.**

(A) DHS employees are not authorized to consent to extraordinary medical care and treatment for any child in DHS voluntary, emergency, temporary, or permanent custody.

(B) When the child is in DHS voluntary, emergency, or temporary custody, consent for the child's extraordinary medical care and treatment is obtained from the parent or legal guardian, unless the:

(i) parent is unavailable to provide consent;

(ii) parent refuses to consent; or

(iii) care and treatment is related to the suspected abuse or neglect.

(C) Court authority is required for extraordinary medical care and treatment when the:

(i) child is in DHS permanent custody;

(ii) parent is unavailable to provide consent;

(iii) parent refuses to provide consent; or

(iv) care and treatment is related to the suspected abuse or neglect.

(D) When the recommended extraordinary medical care and treatment is not the result of a life-threatening emergency requiring immediate medical intervention, the court, per 10A O.S. § 1-3-102:

(i) holds a hearing, upon the application of the district attorney and notice to all parties; and

(ii) may authorize the recommended extraordinary care and treatment.

(E) DHS does not, in any circumstance, consent to a child's abortion, sterilization, termination of life support, or to a Do Not Resuscitate order. The court may authorize the withdrawal of life-sustaining medical treatment or the denial of the administration of cardiopulmonary resuscitation on behalf of the child in DHS custody, upon the written recommendation of

a licensed physician, after notice to the parties, and a hearing.

(3) **Medical consent for child in protective custody.**

(A) Per 10A O.S. § 1-3-102, when the child taken into protective custody without a court order, requires emergency medical care prior to the emergency custody hearing, a peace officer, court employee, or the court may authorize treatment as necessary to safeguard the health and life of the child when the:

(i) treatment is related to the suspected abuse and neglect;

(ii) parent or guardian is unavailable to consent to the treatment recommended by a physician; or

(iii) parent or guardian refuses to consent to the treatment recommended by a physician.

(B) Before a peace officer, court employee, or the court authorizes treatment based on the unavailability of the parent or legal guardian, law enforcement exercises diligence in locating the parent or guardian, when known.

(4) **Consent for medical care for the child in his or her own home.** The parent of the child in DHS custody placed in his or her own home consents to routine and ordinary medical care and treatment and extraordinary medical care and treatment needed by the child. In the event of parental refusal, DHS may consent to routine and ordinary medical care and treatment needed by a child in DHS custody, per OAC 340:75-14-3(c)(1). In the event of parental refusal to consent to extraordinary medical care and treatment needed by a child in DHS custody, DHS complies with procedures, per OAC 340:75-14-3(c)(2).

(5) **Consent for extraordinary medical care for the child who traveled out-of-state.** When the child is out-of-state and requires extraordinary medical care and treatment, the judge may authorize the physician or medical facility to provide the extraordinary medical care via a verbal or written order.

(6) **Experimental medical procedures.** Medical procedures that are experimental may not be compensable through SoonerCare (Medicaid) and are considered to be extraordinary medical care and treatment that must be authorized by the parent or court order.

SUBCHAPTER 15. ADOPTIONS

PART 10. FAMILY ASSESSMENT AND PREPARATION PROCEESS

340:75-15-84.1. Background information search

(a) **Background checks.**

(1) **Mandate to conduct background searches.**

(A) The Oklahoma Department of Human Services (DHS) is mandated to conduct a criminal background and child abuse and neglect information system (KIDS) search for DHS and private adoptive applicants and adult household members, 18 years of age and older, per Section 7505-5.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 7505-5.3).

(B) The background search for DHS adoptive applicants and adult household members includes a search of:

(i) Oklahoma State Bureau of Investigation (OSBI) name and criminal records histories;

(ii) the Oklahoma Sex Offender Registry;

(iii) the Mary Rippy Violent Crime Offender Registry;

(iv) Federal Bureau of Investigations (FBI) national criminal history records based on the applicant's and each adult household member's fingerprints;

(v) the applicant's or adult household member's involvement as a party in any court action found on the:

(I) Oklahoma State Courts Network (OSCN); or

(II) Oklahoma District Court Records (ODCR);

(vi) Oklahoma Department of Public Safety records;

(vii) DHS records including child welfare records involving the applicant~~,~~ and each adult household member~~, and any child of the applicant or adult household member, living in or outside the of home~~; and

(viii) applicable out-of-state child abuse and neglect registries when the applicant or adult household member has not lived continuously in Oklahoma for the past five years.

(I) When a child abuse and neglect registry is not maintained in the applicable state, the adoption specialist requests any information that can be provided.

(II) The applicant is not approved without state-maintained child abuse and neglect registry searches when a registry is maintained in the applicable state;

(ix) the Restricted Registry;

(x) the Oklahoma State Department of Health Nontechnical Services Worker Abuse Registry;

(xi) the Community Services Worker Registry;

(xii) a criminal military history from the service member's branch of service and Family Advocacy Program records, ~~whether~~for the active~~, inactive, or retired~~ military applicant or adult household member; and

(xiii) Juvenile Online Tracking System (JOLTS) records for each applicant's or adult household member's child, 13 through 17 years of age, living in or outside of the home.

(2) **KIDS and the private adoptive applicant.** The private adoptive applicant, adoption agency, or another person authorized to conduct home study investigations:

(A) completes a written request for a KIDS search using Form 04AN028E, Request for Child Abuse and Neglect Information System Search; and

(B) submits Form 04AN028E, with verification of impending adoption, to the Child Protective Services Programs Unit, PO Box 25352, Oklahoma City, Oklahoma 73125-9975.

(3) **Exception to fingerprinting.** The DHS Director or designee may authorize an exception to the fingerprinting requirement and authorize use of an alternative procedure for obtaining a national criminal history records search for any DHS and private adoptive applicant or adult household member, who has a severe condition that precludes him or her from fingerprinting, per 10A O.S. § 1-7-111. In limited, case-specific circumstances, DHS may not be able to obtain:

(A) an individual's fingerprints as a result of his or her disability; or

(B) legible fingerprints due to low quality, as a result of age, occupation, or other conditions, making it impossible for the National Crime Information Center to provide results.

(b) **Felony convictions.**

(1) Per Section 1356.30 of Title 45 of the Code of Federal Regulations, DHS does not approve potential adoptive parents as resource parents when the applicant or any person residing in the potential applicant's home has a criminal conviction record for any of the felony offenses listed in (A) through (D) of this paragraph. The felony offenses are:

(A) physical assault, battery, or a drug-related offense, when the conviction occurs within the five-year period preceding the petition date;

(B) child abuse or neglect;

(C) domestic abuse;

(D) a crime against a child including, but not limited to, child pornography; or

(E) a crime involving violence including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery. Per Section 16 of Title 18 of the United States Code, a crime involving violence means an offense that:

(i) has an element of the use, attempted use, or threatened use of physical force against the person or property of another; or

(ii) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(2) Per 10 O.S. § 7505-6.3, the court may choose to accept an individual as a potential adoptive parent for placement who has a felony conviction listed in (1)(A) of this subsection, when an evaluation of the individual considers the:

(A) crime's nature and seriousness in relation to the adoption;

(B) time elapsed since the crime's commission;

(C) circumstances under which the crime was committed;

(D) degree of rehabilitation;

(E) number of crimes committed; and

(F) showing by clear and convincing evidence that the child will not be at risk by such placement.

(c) **Sex-related crimes.** DHS denies the application to become a resource parent, when an applicant:

(1) or any person residing in the applicant's home has a conviction for any crime, felony or misdemeanor, specified in 57 O.S. § 582, whether the conviction occurred upon a:

(A) verdict;

(B) plea of guilty; or

(C) plea of nolo contendere; or

(2) is subject to, living with, or married to a person who is subject to the Oklahoma Sex Offender Registration Act.

340:75-15-89. Adoptive resource continual evaluation

Continual evaluation. The adoptive parent is continually evaluated in his or her home. ~~An annual update or a reassessment every three years is conducted for each adoptive resource.~~The resource family assessment is updated annually from the resource home's approval date in the Oklahoma Department of Human Services State Automated Child Welfare Information System (KIDS).

[OAR Docket #19-632; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES

[OAR Docket #19-633]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Administration
Part 1. General Administration
340:100-3-5 through 340:100-3-5.1 [AMENDED]
340:100-3-5.2 [AMENDED]
Part 3. Administration
340:100-3-40 [AMENDED]
Subchapter 17. Employment Services
Part 3. State-Funded Employment (Sheltered Workshop) Services
340:100-17-16 [AMENDED]
Part 5. Other State Funded Employment Services [REVOKED]
340:100-17-30 [REVOKED]
Subchapter 18. Licensing
340:100-18-1 [AMENDED]
(Reference WF 19-100)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); O.S. 59 § 4100.1; O.S. 30 §§ 3-102, 3-103, 3-119, and 4-104; O.S. 10 § 1415; and O.S. 56 § 228; and Sections 441.301 and 441.302 of Title 42 of the Code of Federal Regulations.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019

PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed amendments to Chapter 100, Subchapters 3, 17, and 18 amend the rules to implement changes recommended during the annual Developmental Disabilities Services (DDS) rule review process.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 3. ADMINISTRATION

PART 1. GENERAL ADMINISTRATION

340:100-3-5. Advocacy and guardianship

(a) **Purpose.** Developmental Disabilities Services ~~Division (DDSD) Advocacy and Guardianship Program identifies the advocacy needs of~~(DDS) supports each service ~~recipient to protect the service~~ recipient's ~~interests, rights, and welfare~~right to self-determination.

(1) ~~Although a service recipient may have other advocates, only a guardian may act on behalf of his or her ward, per (OAC) 340:100-1-2, to the extent authorized in the guardianship order and Title 30 of the Oklahoma Statutes (O.S.)~~An advocate assists service recipients to represent his or her own interests.

(2) ~~Each guardian is:~~

~~(A) responsible for representing the interest of his or her ward as provided by Oklahoma law; and~~

~~(B) obligated to involve the ward in decision-making to the extent the ward is able~~Although a service recipient may have other advocates, only a guardian may act on behalf of his or her ward, per Oklahoma Administrative Code (OAC) 340:100-1-2 to the extent authorized in the guardianship order and, the Oklahoma Guardianship and Conservatorship Act, per Section 1-101 et seq. of Title 30 of the Oklahoma Statutes (30 O.S. §§ 1-101 et seq.).

(3) ~~An advocate is responsible for assisting the service recipient to represent the interests of the service recipient~~ Each guardian is:

(A) responsible for representing the interest of his or her ward as provided by Oklahoma law; and

(B) obligated to involve the ward in decision-making to the extent the ward is able.

(b) **Capacity to give informed consent.** Service recipients, 18 years of age ~~18~~ and older, are presumed to have capacity to give informed consent except to the extent adjudicated incapacitated by the court. A service recipient:

(1) is not considered incapacitated solely by reason of his or her diagnosis~~or admission to:~~

~~(A) Northern Oklahoma Resource Center of Enid (NORCE);~~

~~(B) Southern Oklahoma Resource Center (SORC); or~~

~~(C) Robert M. Greer Center (Greer)~~;

(2) may be adjudicated incapacitated in one area while being fully capable ~~of understanding and exercising his or her rights~~ in other areas; and

(3) has the right to exercise judgment in all areas of capacity.

(c) **Assessment of capacity to give informed consent.** Each service recipient's current need for advocacy or guardianship services is reviewed at least annually and documented in the Individual Plan (Plan).

(1) Form 06MP032E, Capacity Assessment, is:

(A) used to determine the service recipient's capacity to give informed consent and identify the type of assistance, if any, the service recipient needs to make life decisions and be protected from exploitation and maltreatment~~.~~; and

(B) completed for each:

(i) adult and minor attaining the age of 17 ~~½~~1/2 years, who receives residential services through the Community Waiver or Homeward Bound Waiver, when recommended by his or her Personal Support Team (Team); and

(ii) child in Oklahoma Department of Human Services (OKDHS) custody who receives DDSD services upon reaching ~~the age of~~ 16 years of age, per OAC 340:75-8-39; and

(iii) ~~resident older than age 17 ½ residing in:~~

~~(I) NORCE;~~

~~(II) SORC; or~~

~~(III) Greer~~Robert M. Greer Center residents.

(2) ~~In order for the Assessment~~The Team ~~to meet~~meets to complete Form 06MP032E~~,~~. ~~all~~ All members are notified of the meeting at least two weeks in advance and offered the opportunity to provide written input ~~if~~ when they cannot attend. ~~The Assessment Team includes:~~

~~(A) all members of the Personal Support Team; and~~

~~(B) the service recipient's primary physician, if the service recipient resides at NORCE, SORC, or Greer; and~~

~~(C) a licensed psychologist or psychiatrist, if the service recipient resides at NORCE, SORC, or Greer.~~

(3) For service recipients who do not receive residential services per OAC 340:100-5-22:

(A) a capacity assessment is not required. If the family or service recipient wishes to complete a capacity assessment, the ~~DDSD~~DDS case manager ~~includes this assessment as an outcome in the Needs Assessment or Plan, and the family participates in the assessment process~~completes a capacity assessment using Form 06MP032E; and

(B) a review of the service recipient's need for advocacy or guardianship must occur annually beginning at age 17$\frac{1}{2}$, and be addressed in the ~~Needs Assessment or~~ Plan~~, using Form 06MP033E, Guardianship, Advocacy, and Capacity Initial Review~~. If this review indicates needs in the area of advocacy, the DDSD case manager offers a capacity assessment.

(d) **~~Recommendations of~~Assessment Team recommendations.** ~~DDSD~~DDS supports the use of less restrictive alternatives to guardianship.

(1) The ~~Assessment~~ Team recommends guardianship after they ~~have considered~~consider and ~~ruled~~rule out less restrictive alternatives to guardianship. Alternatives include, but are not limited to:

(A) guidance and support from family or friends;

(B) a volunteer advocate;

(C) Plan modification ~~of the Plan~~ to more effectively meet the service recipient's health, safety, and financial needs;

(D) a representative payee;

(E) limited bank accounts;

(F) power of attorney, durable power of attorney, or durable power of attorney with health care powers;

(G) Advance Directive for Health Care;

(H) a trust fund; or

(I) a conservatorship.

(2) ~~If~~When Form 06MP032E indicates ~~that~~ a guardian is needed, the ~~Personal Support~~ Team recommends an appropriate person to serve.

(A) Priority for persons to serve as guardians is given to:

(i) any person nominated by the service recipient,~~pursuant to Section 3-102 of Title 30 of O.S. (~~per 30 O.S. § 3-102~~)~~;

(ii) a current guardian appointed by an appropriate court in another jurisdiction;

(iii) a person nominated by will or other writing of a deceased parent, spouse, or adult child who was serving as the service recipient's guardian,~~pursuant to~~ per 30 O.S. § 3-103;

(iv) ~~the spouse of the~~a service ~~recipient~~recipient's spouse;

(v) ~~an adult child of the~~a service ~~recipient~~recipient's adult child;

(vi) a ~~parent(s) of the~~ service ~~recipient~~recipient's parent;

(vii) a ~~sibling of the~~ service ~~recipient~~recipient's sibling;

(viii) a person ~~with whom~~ the service recipient has been living with for more than six months prior to the filing of the petition for guardianship. Providers subject to the provisions of the Nursing Home Care Act, Residential Home Care Act, or Group Home for Developmentally Disabled or Physically Handicapped Persons Act ~~must~~is not ~~be~~ appointed guardian of such service recipient unless the provider is the service recipient's spouse, mother, father, sibling, adult child, aunt, uncle, grandparent, or adult grandchild; or

(ix) other relatives of the service recipient, such as a niece, nephew, or cousin.

(B) ~~If~~When an appropriate relative is not available, a volunteer is sought, per OAC 340:100-3-5.1.

(e) **Guardianship eligibility requirements.**

(1) A guardian must:

(A) be at least 18 years of age;

(B) be a resident of Oklahoma for at least one year, except as provided in 30 O.S. § 4-104;

(C) not be under any financial obligation to the proposed ward; and

(D) disclose to the ~~Personal Support~~ Team and ~~to the~~ court any potential conflict of interest that may preclude acting in the proposed ward's best interest~~of the proposed ward~~.

(2) An incapacitated or partially incapacitated person cannot be appointed guardian.

(3) A convicted felon cannot be appointed guardian, except upon:

(A) further review by the court into the nature of the felony; and

(B) court approval.

(f) **~~Responsibilities of a guardian~~Guardian responsibilities.**

(1) The guardian:

(A) is responsible for protecting the rights of the ward, per 30 O.S. § 1-103;

(B) files the Plan for the Care and Treatment of the Ward, with the court within ~~ten~~10-calendar days of appointment as guardian;

(C) files Administrative Office of the Courts (AOC) Form 34, Report on the Guardianship of the Person~~,~~; or AOC Form 34a, Report on the Guardianship of Property~~,~~; or both, with the court. Assistance in completing these annual reports may be obtained from the ~~DDSD~~DDS case manager or guardianship coordinator. The guardian may ~~also~~ hire an attorney to prepare annual reports for a fee;

(D) has a legal duty to:

(i) know the service recipient, including awareness of his or her capabilities, needs, and physical and mental health;

(ii) maintain contact with the service recipient;

(iii) ensure the service recipient is living in the least restrictive environment that meets his or her needs;

(iv) provide necessary consents authorized by the court; and

(v) notify the court ~~if~~when the service recipient's incapacity ~~has ended~~ends; and

(E) has limited authority, per 30 O.S. § 3-119 and the guardianship order that sets forth the limitation of powers of a guardian, ~~by~~ prohibiting the guardian from consenting on behalf of the ward to the withholding or withdrawal of life-sustaining procedures except with specific authorization of the court having jurisdiction over the guardianship proceedings. Authorization must be granted in a separate court order and only ~~at such time~~ when the ward is in need of life-sustaining treatment.

(2) When performing duties and exercising authority, the guardian:

(A) ensures the interests, rights, and welfare of the ward are protected;

(B) may act independently~~, if necessary,~~ from provider agency staff and ~~DDSD~~DDS staff;

(C) encourages the ward to:

(i) participate to the maximum extent possible in all decisions that affect the ward; and

(ii) act on all matters in which the ward is able to do so within the limitations imposed by the court; and

(D) as appropriate, assists the ward to develop or regain~~, to the maximum extent possible,~~ his or her capacity to meet the essential requirements for health or safety.

(g) **Changes in guardianship.** The ward, any person interested in the welfare of the ward, or a guardian may make application to the court for:

(1) termination of the guardianship;

(2) removal of a guardian;

(3) imposition of additional restrictions or the removal of existing restrictions; or

(4) a review hearing.

(h) **Special guardianships.** ~~The Advocacy and Guardianship Program~~DDS assists ~~service recipients who are in need of a temporary surrogate to obtain~~in establishing special guardianships when consent is needed for ~~non-emergency~~ emergency medical and dental procedures or to protect the service recipient's money, property, or assets at risk of loss or exploitation through a process to establish special guardianship.

(i) **Costs and fees.** Court costs are not charged for filing guardianship petitions and reports for persons who are applicants for, or recipients of Social Security, per 56 O.S. § 192.

~~(j) **Responsibilities of OKDHS Legal Division.** If a guardian cannot be found for a resident of NORCE, SORC, or Greer, OKDHS Legal Division has the authority, per 10 O.S. § 1415, to file a petition for the appointment of a guardian ad litem for the service recipient.~~

~~(1) Legal Division attorneys do not provide any legal services to any other party or potential party in guardianship cases.~~

~~(2) The only legal services provided are to ensure compliance with 10 O.S. § 1415. No other legal services in connection with these guardianships are provided directly or indirectly by OKDHS.~~

340:100-3-5.1. Volunteer guardians and advocates

(a) **Purpose.** ~~Developmental Disabilities Services (DDS) contracts with an agency to maintain a system to recruit, screen, match, monitor, and support volunteer guardians.~~ Volunteer guardians and advocates ~~for eligible~~are recommended by the Personal Support Team (Team) when~~for eligible~~ service recipients have unmet advocacy needs and no appropriate relative willing to serve. ~~To be eligible, the service recipient must:~~

~~(1) be assigned a DDS case manager;~~

~~(2) have been determined through the capacity assessment process, per Oklahoma Administrative Code (OAC) 340:100-3-5, to need a guardian or volunteer advocate; and~~

~~(3) if volunteer guardianship is recommended; have no appropriate relative willing to serve as guardian.~~

(b) **Developmental Disabilities Services (DDS) responsibilities.**

(1) When the need for a guardian ~~or advocate~~ is determined through the capacity assessment process, per Oklahoma Administrative Code (OAC) 340:100-3-5, the DDS case manager forwards Form 06MP032E, Capacity Assessment, with a recommendation for a volunteer guardian ~~or advocate~~ to the DDS case management supervisor. When volunteer guardianship is recommended, documentation of attempts made to locate ~~a~~an eligible guardian, ~~among those who are eligible~~ per OAC 340:100-3-5 must be included.

(2) The DDS case management supervisor reviews the documents, and ~~if~~when approved, forwards the documents to the ~~guardianship coordinator~~DDS director or designee.

(3) The ~~guardianship coordinator~~DDS director or designee reviews Form 06MP032E and, ~~if~~when approved, ~~makes a referral to the volunteer guardianship agency to initiate the process to recruit a volunteer guardian or advocate~~issues a voucher to the volunteer.

(c) **Volunteer guardianship eligibility requirements.** In addition to requirements, per OAC 340:100-3-5, eligibility criteria for volunteer guardians listed in ~~subsections~~ (1) through (6) of this subsection apply.

(1) A corporate officer, member of the board of directors, owner, operator, administrator, or employee of a facility subject to provisions of Section 1-1901 et seq. of Title 63 of the Oklahoma Statutes (63 O.S. §§ 1-1901 et seq.) or 10 O.S. §§ 1430.1 et seq., or other DDS providers are ineligible to be appointed volunteer guardian of a person receiving services from that provider.

(A) An immediate family member, such as a wife, husband, brother, sister, biological or adoptive child, biological or adoptive parent, stepparent, stepchild,

adult biological or stepchild, of an ineligible person cannot serve as a volunteer guardian.

(B) An extended family member, such as a parent-in-law, grandchild, grandparent, brother-in-law, sister-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, or first cousin, of an ineligible person cannot serve as a volunteer guardian when there is evidence that financial interdependence exists.

(2) DDS employees cannot serve as volunteer guardians.

(A) An immediate family member, including a wife, husband, brother, sister, biological or adoptive child, biological or adoptive parent, stepparent, stepchild, adult biological or stepchild, of the DDS employee cannot serve as a volunteer guardian.

(B) An extended family member, including a parent-in-law, grandchild, grandparent, stepchild, brother-in- law, sister-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, or first cousin, of the DDS employee cannot serve as a volunteer.

(3) Any exceptions to the selection of a volunteer guardian, per OAC 340:100-3-5.1(c)(1) and (2) must be approved by the DDS programs manager for guardianship.

(4) Employees of Oklahoma Department of Human Services (DHS) cannot serve as volunteer guardians for ~~residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), or the~~ Robert M. Greer Center ~~(Greer)~~residents, per 10 O.S. § 1415.

(5) Potential guardians must:

(A) consent to a background check, per OAC 340:100-3-39 and a DHS Community Services Worker Registry check;

(B) be willing and able to fulfill guardian responsibilities;

(C) be certified by ~~the volunteer guardianship agency~~DDS; and

(D) be approved by the ~~Personal Support Team (~~Team~~)~~.

(6) A volunteer guardian:

(A) supports philosophies and values consistent with the DDS mission statement, per OAC 340:100-1-3.1; and

(B) may not act as a volunteer ~~advocate or~~ guardian for more than two service recipients unless approved in advance, and in writing, by the DDS programs manager for guardianship.

(d) **Volunteer ~~advocate eligibility requirements~~guardian responsibilities.** ~~DDS supports the recruitment of volunteers from outside the service delivery system to avoid potential conflicts of interest.~~

~~(1) Non-DHS DDS employees, contract providers, and employees of contract providers may serve as volunteer advocates when:~~

~~(A) an ongoing relationship exists with the service recipient; and~~

~~(B) they are not providing direct services to the service recipient and are not employed by a provider agency or DHS program that provides services to the service recipient; and~~

~~(C) they serve as a volunteer advocate or guardian for no more than two service recipients.~~

~~(2) DDS employees may not serve as volunteer advocates.~~

~~(3) Any exceptions to the selection of a volunteer advocate, per OAC 340:100-3-5.1 must be approved in advance and in writing by the DDS programs manager for guardianship~~Volunteer guardian responsibilities are outlined, per OAC 340:100-3-5.

(e) **Volunteer guardian ~~responsibilities~~and advocate eligibility requirements.** ~~Volunteer guardian responsibilities are outlined per OAC 340:100-3-5~~DDS supports the recruitment of volunteers from outside of the service-delivery system to avoid conflicts of interest.

(1) Non-DHS employees, contract providers, and employees of contract providers may serve as volunteer advocates, when:

(A) an ongoing relationship exists with the service recipient;

(B) they are not providing direct services to the service recipient and are not employed by a provider agency or DHS program that provides services to the service recipient; and

(C) they serve as a volunteer advocate or guardian for no more than two service recipients.

(2) DDS employees may not serve as volunteer advocates.

(3) Any exceptions to the selection of a volunteer advocate, per OAC 340:100-3-5.1 must be approved in advance and in writing by the DDS director or designee.

(4) The appointment of a volunteer advocate is made by Team agreement and is documented in the Individual Plan (Plan).

(f) **Volunteer advocate responsibilities.** A volunteer advocate assists the service recipient in making decisions, and supports the service recipient in preserving his or her rights and obtaining necessary services. Such supports may include:

(1) ~~advocating for the service recipient;~~

~~(2) assisting the service recipient in decision making;~~

~~(3)~~ reviewing the quality of services provided to the service recipient;

(~~4~~2) attending the ~~Individual~~ Plan meeting or other meeting(s);

(~~5~~3) assisting the service recipient with ~~finances~~financial decisions;

(~~6~~4) accompanying the service recipient to medical appointments; or

(~~7~~5) assisting the service recipient in completing applications.

(g) **~~Volunteer advocate responsibilities.~~** ~~Temporary advocate assistance is requested when a service recipient or Team seeks a guardianship dismissal in order to restore full decision making rights to the service recipient. Temporary volunteer advocate responsibilities include:~~

~~(1) filing a petition on behalf of the service recipient as an interested party so the request for restoration of capacity can be heard in court; and~~

~~(2) after capacity is restored, continuing to be available to the service recipient for support and guidance for a period of no more than six months.~~

~~(h) **Guardianship voucher.** After the volunteer guardianship agency certifies a prospective volunteer guardian the action is approved by the Team, and when able, the service recipient. The volunteer submits Form 06MP031E, Guardianship Voucher, per OAC 340:100-3-5.2, to pay the attorney fees necessary to file the guardianship petition. Court involvement is not required to establish volunteer advocacy, therefore the voucher is not available in such cases.~~

~~(i)~~ **Volunteer guardian and advocate monitoring.** Volunteer guardian and advocate monitoring is provided by ~~the volunteer guardianship agency per requirements in the DHS and agency contract~~DDS guardianship staff.

(~~j~~h) **Volunteer guardian and advocate training requirements.** Volunteers must participate in training regarding understanding and defining advocacy, developing effective advocacy skills, working effectively with service recipients and Teams, community inclusion, Oklahoma's service delivery system, and confidentiality. Volunteer guardians must participate in additional training regarding guardianship responsibilities, duties, and limitations.

(1) Training is provided by ~~the volunteer guardianship agency~~DDS at no cost to the volunteer.

(2) Volunteers receive orientation from the volunteer guardianship agency regarding applicable DHS rules and procedures.

(3) Volunteer guardians proceed with knowledge they are not covered by 51 O.S. § 151 et seq., The Governmental Tort Claims Act, as they are not authorized to act on behalf of DHS, nor can they be so authorized without creating a conflict of interest in their roles as guardians.

~~(k) **Volunteer guardianship agency responsibilities.** Volunteer guardianship agency responsibilities include:~~

~~(1) recruiting volunteers to serve as guardians and advocates;~~

~~(2) obtaining background checks of potential volunteer guardians and advocates;~~

~~(3) contacting references. The volunteer guardianship agency contacts a minimum of three references. If responses are negative or if three references cannot be found, the volunteer is not considered;~~

~~(4) submitting proposed volunteers to the Team for review and approval;~~

~~(5) arranging visits between potential volunteers and service recipients;~~

~~(6) providing training and orientation on DHS rules and procedures, including 51 O.S. § 151 et seq.;~~

~~(7) monitoring per OAC 340:100-3-5.1; and~~

~~(8) providing technical assistance as requested by the volunteer or DDS case manager, including:~~

~~(A) attending any Team meetings;~~

~~(B) accompanying the volunteer on home visits;~~

~~(C) reviewing legal or specific documents or records regarding the service recipient; and~~

~~(D) providing due date reminders for annual court reports, and when needed, providing assistance completing reports.~~

340:100-3-5.2. Guardianship Voucher Program

(a) **Scope and applicability.** ~~Pursuant to~~Section 1415 of Title 10 and Section 228 of Title 56 of the Oklahoma Statutes, establishes the requirements for the Oklahoma Department of Human Services ~~(OKDHS) may~~(DHS) to pay for legal fees associated with guardianship proceedings for persons, who:

(1) ~~receive Developmental Disabilities Services Division (DDSD) Home and Community Based Services (HCBS) Waiver~~are members of the Homeward Bound class; ~~or~~

(2) ~~are residents of Northern Oklahoma Resource Center of Enid (NORCE), Southern Oklahoma Resource Center (SORC), and Robert M. Greer Center (Greer).~~ receive Developmental Disabilities Services ~~Division (DDSD)~~(DDS) Home and Community-Based Services (HCBS) Waiver services and, are determined by the DDS director or designee to need guardianship due to imminent risk to health, safety, or finances; or

(3) are Robert M. Greer Center residents and are determined by the DDS director or designee to need guardianship due to imminent risk to health, safety, or finances.

(b) **Payment.** Payment for legal services is contingent upon resource availability ~~of resources~~ and does not exceed $700 per service recipient. Priority for funding is for groups in the order identified by (a) of this Section.

(c) **Participation.** Participation in the Guardianship Voucher Program extends only to ~~those~~ service recipients ~~who have been~~ determined, per Oklahoma Administrative Code (OAC) 340:100-3-5, to need a service listed in ~~OAC 340:100-3-5.2~~ (d) of this Section.

(d) **Services.** Payment may be made for legal services necessary to:

(1) establish guardianship;

(2) replace, change, or add a guardian;

(3) appoint a successor guardian;

(4) alter the terms or level of an established guardianship; or

(5) restore the ward's capacity.

(e) **Subsequent services.** Requests for payment for subsequent legal services related to the guardianship of the same service recipient may be approved by the ~~DDSD~~DDS director or designee.

(f) **Eligibility.** The guardian or potential guardian applying for a voucher must be:

(1) a ~~relative of the~~ service ~~recipient~~recipient's relative or a volunteer, ~~certified in accordance with~~ per OAC 340:100-3-5.1; and

(2) recommended by the ~~DDSD~~DDS Personal Support Team (Team).

(g) **Financial eligibility.**

(1) Approved prospective volunteer guardians are exempt from financial eligibility requirements.

(2) When the service recipient's spouse, mother, or father ~~of the service recipient~~ is applying to be the guardian, ~~such applicant~~he or she is subject to financial eligibility requirements. To be financially eligible to receive a guardianship voucher, the applicant spouse's annual adjusted gross income ~~of the applicant spouse~~ or the applicant's mother's or father's household income ~~of the applicant mother or father of the service recipient~~ must be $60,000 or less.

(3) Other relatives who desire to become the service recipient's guardian are exempt from the financial eligibility criteria.

(h) **Guardianship voucher application.**

(1) Form 06MP030E, Guardianship Voucher Application, is available from the ~~DDSD~~DDS case manager assigned to the service recipient~~, the area guardianship coordinator, resource center guardianship coordinator, or volunteer guardianship agency~~.

(2) The applicant's spouse, mother, or father ~~making application~~applying for the guardianship voucher must submit required income verification, per OAC 340:100-3-5.2(i).

(3) Applications are sent to the ~~DDSD guardianship programs manager~~DDS director or designee.

(4) ~~Any incomplete application is~~Incomplete applications are returned to ~~the applicant~~applicants for correction.

(5) ~~Applications for the guardianship~~Guardianship voucher applications are considered in chronological order of receipt at ~~DDSD~~DDS State Office, with priority given to Homeward Bound class members.

(6) The number of applications approved is determined by available funding and, eligibility, per (a) of this Section. ~~Applications not approved during a fiscal year due to insufficient funding are placed on a waiting list in the chronological order received and are processed as funds become available.~~

(i) **~~Verification of income~~Income verification.** ~~If~~When the applicant is the service recipient's spouse, mother, or father~~of the service recipient~~, verification of annual income must be provided. Acceptable forms of verification include a signed copy of the applicant's most recent federal income tax return or documentation of all sources of income from Supplemental Security Income, Temporary Assistance for Needy Families, child support, alimony, other state or federal ~~subsidy~~subsidies, or other types of income.

(j) **Notification of application status.** The applicant is provided written notice of approval~~,~~ or denial~~, or placement on the waiting list of the application for the guardianship voucher~~ within 30-calendar days of receipt of completed Form 06MP030E at ~~DDSD~~DDS State Office.

(k) **Issuance and expiration of guardianship voucher.** When an application for the guardianship voucher is approved, dated Form 06MP031E, Guardianship Voucher, is issued to the applicant who then seeks and retains legal counsel. Each Form 06MP031E is approved for use from the date of issuance and is valid ~~for 365 days from the date of issuance~~ through the printed expiration date on the voucher.

(l) **Submitting voucher for payment.** Upon completion of the guardianship proceedings, the attorney who provides the service submits Form 06MP031E to ~~DDSD~~ DDS State Office for payment. A copy of all pleadings filed, the letters of guardianship, the guardianship order, Plan for the Care and Treatment of the Ward, and an itemized bill for legal services must be attached to Form 06MP031E. Form 06MP031E and required documentation must be received by ~~the DDSD guardianship programs manager within 365 days from the date of issuance, or~~designated DDS State Office staff prior to the expiration date identified, or Form 06MP031E expires and is null and void.

(m) **Fair hearing.** Any person who ~~has been~~was denied a voucher may request a hearing,~~in accordance with~~ per OAC 340:2-5.

PART 3. ADMINISTRATION

340:100-3-40. Community records

(a) **Purpose.** Oklahoma Administrative Code (OAC) 340:100-3-40 sets forth requirements for:

(1) maintenance of records by contract providers;

(2) transfer of documents to a history file for service recipient records maintained by the contract provider; and

(3) transfer of information when a service recipient changes contract providers.

(b) **General requirements.** Records, electronic or paper, maintained by the contract provider are indexed, orderly, well-maintained, readily accessible, and current. Records must contain adequate documentation of services rendered. Electronic records must meet the requirements, in OAC 317:30-3-4.1.

(1) All service recipient records are available for review, upon request, by the service recipient, his or her legal guardian, ~~and~~contract provider staff, and ~~authorized agents of~~ Oklahoma Department of Human Services (DHS) authorized agents. ~~Copies of records are available upon request by such persons.~~

(2) The service recipient record is maintained with:

(A) an index;

(B) ~~identification of~~the service recipient's name on the record and on each page;

(C) discernable section tabs~~clearly marked~~; and

(D) documents secured in the record.

(3) All entries in the record:

(A) are made per OAC 317:30-3-15;

(B) are ~~made~~ in chronological order;

(C) are legible;

(D) include the date and time of each entry, with legible identification of the person making the entry; and

(E) include, ~~if~~when the entry is health-related:

(i) a description of the concern; and

(ii) action taken.

(4) The provider ensures compliance with OAC 340:2-8-1 through OAC 340:2-8-13 and OAC 340:100-3-2

pertaining to protection, use, and release of personal information. The provider holds ~~confidential all~~ personal information regarding service recipients, including names, addresses, photographs, records of evaluation, and all other records confidential. Information is not disclosed, directly or indirectly, unless consent is obtained in writing from an adult service recipient or the legal guardian.

(c) **Home record for service recipients receiving community residential supports, group home services, or non-residential habilitation training specialist (HTS) services.** A current record of services is maintained by the contract provider in the home for each service recipient receiving community residential supports, per OAC 340:100-5-22.1~~,~~; group home service, per OAC 340:100-6; or non-residential HTS services, per OAC 340:100-5-35.

(1) Documents contained in each home record are not removed and, include:

(A) ~~items that are not removed from the record, including~~guardianship documents and other legal documents;

(B) ~~copy of~~current Individual Plan (Plan) packet and addendum copies;

(C) applicable health-related documents including, but not limited to:

(i) Form 06HM039E, Continuous Medical Record, per OAC 340:100-3-40.1;

(ii) Form 06HM005E, Referral Form for Examination or Treatment, physician orders, discharge summaries, and emergency room reports;

(iii) Form 06HM006E, Health Status and Medication Review;

(iv) special instructions or the Health Care Plan;

(v) individually-identified data forms relevant to the service recipient's current health status;

(vi) a Dyskinesia Identification System: Condensed User Scale (DISCUS) or Abnormal Involuntary Movement Scale (AIMS), ~~if~~when required, per OAC 340:100-5-29;

(vii) current immunization record;

(viii) current medication administration records;

(ix) the most recent lab, x-ray, and consultation reports, and pharmacological evaluation, ~~if~~ when applicable; ~~and~~

(x) miscellaneous health-related consultations and correspondence; and

(xi) Form 06HM073E, Referral Form for Psychiatric Treatment or Examination;

(D) miscellaneous documents relating to the service recipient including, but not limited to:

(i) observation notes;

(ii) Form 06CB035E, Site Visit Report, completed by all professional contract providers~~and program coordination staff~~;

(iii) ~~implementation strategies~~standing medical orders and protocols; ~~and~~

(iv) applicable data collection sheets; and

(v) documentation of program coordination staff home visits~~.~~;

(E) quarterly residential reports on progress; and

(F) Form 06MP070E, Access to Home Record and Verification of Monitoring Requirement, certifying that all authorized persons accessing the service recipient information contained within the home record were informed and understand the penalties for misuse of confidential and protected information, per Section 1533.1 of Title 21 of the Oklahoma Statutes.

(2) In unusual circumstances a service recipient's home record or specified types of documents from the record may be maintained at a location other than the service recipient's home, ~~if~~when requested by the Team and approved in writing by the Developmental Disabilities Services ~~Division area manager~~field administrator.

(d) **Retention.** Each contract provider retains a record for each service recipient receiving services from the provider.

(1) Transfer of all documents more than three months old from the provider ~~agency record~~agency's records to a history file occurs yearly, unless otherwise specified, per OAC 340:10-3-40.

(2) The provider agency retains original records for a period of six years or until any pending litigation involving the service recipient is completed, whichever occurs last.

(e) **Transfers between agencies.** When a service recipient changes provider agencies, the agency provides the new agency with a paper or electronic copy of the current home record and any health documents requested by the Team within seven- calendar days of the transfer.

(f) **Other provider records.** The provider must maintain service records that substantiate the provision of services, eligibility of service recipients, and outcome of services.

(1) Records are maintained for a period of six years after ~~the Oklahoma Department of Human Services has made~~DHS makes the final payment and all pending matters are closed.

(2) The provider maintains copies of all claims, substantiating documents, and records regarding agency fiscal status within corporate offices in Oklahoma.

SUBCHAPTER 17. EMPLOYMENT SERVICES

PART 3. STATE-FUNDED EMPLOYMENT (SHELTERED WORKSHOP) SERVICES

340:100-17-16. State-funded employment (sheltered workshop) reimbursement ~~and therapeutic leave~~

~~(a)~~ Agencies providing state-funded employment (sheltered workshop) services for eligible service recipients receive a flat daily rate~~approved by the Oklahoma Commission for Human Services~~.

(1) ~~The~~When a service recipient is unable to work five hours per day, the provider agency may receive prorated

reimbursement ~~as~~when recommended by the service recipient's Personal Support Team (Team)~~and documented in the Individual Plan (IP) for service recipients who are unable to work five hours per day~~. Team review and approval is documented in the Individual Plan (IP).~~If~~When a service recipient is unable to participate a full five hours, other eligible service recipients can fill the balance of the work day.

(2) State-funded employment services for eligible service recipients must be included in the service recipient's IP.

(3) Payment is only disbursed following the delivery of authorized services to eligible service recipients.

~~(b) Each service recipient is allowed 26 days per year of therapeutic leave without reduction in agency funding.~~

~~(1) A maximum of 16 days of therapeutic leave may be used for:~~

~~(A) holidays, up to a maximum of 12 days per state fiscal year; and~~

~~(B) service recipient or family initiated vacations.~~

~~(2) The remainder of each service recipient's leave days may be used for:~~

~~(A) service recipient medical concerns, illnesses, doctor or therapy appointments, or injuries.~~

~~(i) When a service recipient is absent more than five consecutive days and therapeutic leave is billed, a Team meeting must be held to determine whether the service recipient's employment program should be suspended to avoid exhausting all of the service recipient's therapeutic leave.~~

~~(ii) Service recipients are encouraged to schedule appointments outside of employment hours;~~

~~(B) severe weather conditions;~~

~~(C) other conditions that threaten the safety or welfare of service recipients and staff; or~~

~~(D) service recipient refusal to attend. When a service recipient refuses to attend for three consecutive days, the Team must identify and address related issues before additional billing is authorized.~~

~~(c) In extraordinary situations, the Oklahoma Department of Human Services (OKDHS) may approve up to 20 additional days for prolonged medical conditions as recommended by the service recipient's Team.~~

~~(1) Requests for additional days for prolonged medical conditions are submitted to designated Developmental Disabilities Services Division (DDSD) staff for approval.~~

~~(2) The request for additional days for prolonged medical conditions must be specific to the service recipient and include:~~

~~(A) the name of the service recipient;~~

~~(B) the specific reason for the leave request;~~

~~(C) the number of extended medical leave days requested;~~

~~(D) supporting documentation, such as physician report or Team minutes; and~~

~~(E) the signature of the provider agency case manager or program coordinator.~~

~~(3) The DDSD area manager or designee mails a written response of approval, denial, or request for additional information within five days of receipt of the request.~~

~~(4) Providers cannot request more hours or days of therapeutic leave than the service recipient(s) was scheduled to work.~~

~~(d) If a service recipient has to stay home because the provider does not have adequate staff, therapeutic or extended leave is not authorized.~~

PART 5. OTHER STATE FUNDED EMPLOYMENT SERVICES [REVOKED]

340:100-17-30. Other state funded employment services [REVOKED]

~~State funded employment services may supplement employment services offered through the Community Waiver and Homeward Bound Waiver, per (OAC) 317:40-7.~~

~~(1) State funded employment services include:~~

~~(A) therapeutic leave, limited to 10% of authorized units with a maximum of 150 hours per service recipient each fiscal year.~~

~~(i) Each service recipient is eligible for up to 150 hours of therapeutic leave per fiscal year if the service recipient receives:~~

~~(I) center based prevocational services;~~

~~(II) community based prevocational services;~~

~~(III) enhanced community based prevocational services;~~

~~(IV) individual placement in community based services; or~~

~~(V) supplemental supports.~~

~~(ii) Therapeutic leave may be used for:~~

~~(I) legal holidays, maximum of 12 days per fiscal year;~~

~~(II) service recipient or family initiated vacations;~~

~~(III) service recipient medical appointment, concern, illness, or injury;~~

~~(IV) severe weather conditions; or~~

~~(V) service recipient refusal to attend the employment program.~~

~~(iii) When a service recipient is absent for more than five consecutive days due to illness, the service recipient's Team meets to discuss possible:~~

~~(I) program interventions; and~~

~~(II) suspension of the service recipient's employment program to avoid exhausting all available therapeutic leave.~~

~~(iv) When a service recipient refuses to attend his or her employment program for three consecutive days, the Team, including residential staff, meets to discuss possible program changes. The employment provider cannot claim for therapeutic leave beyond the three consecutive days until the Team has met.~~

~~(v) Claims for therapeutic leave require supporting documentation that includes the date and length of absence and specific reason for absence.~~

~~(vi) The provider can claim for therapeutic leave only for the number of scheduled work hours the service recipient missed.~~

~~(vii) The provider cannot claim for therapeutic leave when the:~~

~~(I) provider agency is closed for reasons other than severe weather conditions;~~

~~(II) provider staff is absent, other than on legal holidays; or~~

~~(III) service recipient's absence is caused by the provider's inability to supply trained back-up staff.~~

~~(viii) The provider pays the direct support staff member the salary that the staff member would have earned if the:~~

~~(I) provider bills for therapeutic leave; and~~

~~(II) direct support staff member is unable to work due to the absence of the service recipient.~~

~~(B) center-based prevocational services;~~

~~(C) individual placement in community-based services;~~

~~(D) community-based prevocational services;~~

~~(E) enhanced community-based services;~~

~~(F) individual placement in job coaching services;~~

~~(G) job coaching services;~~

~~(H) enhanced job coaching services;~~

~~(I) stabilization and extended services; and~~

~~(J) employment training specialist services.~~

~~(2) State-funded employment services are available to members of the Homeward Bound class who are not eligible for Developmental Disabilities Services Division waiver services.~~

SUBCHAPTER 18. LICENSING

340:100-18-1. Board Certified Behavior Analyst (BCBA) license and Board Certified Assistant Behavior Analyst (BCaBA) certification ~~Issued 8-13-10~~

(a) **Authority.** Section 1928 of Title 59 of the Oklahoma Statutes (59 O.S. § 1928) directs the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) Developmental Disabilities Services ~~Division (DDSD)~~(DDS) to provide for licensing of ~~Board Certified Behavior Analysts (BCBA)~~(BCBAs) and certification of ~~Board Certified Assistant Behavior Analysts (BCaBA~~BCaBAs.~~)~~

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

(1) **"Applied behavior analysis"** means the ~~design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior through skill acquisition and the reduction of problematic behavior~~process of systematically applying interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree, and to demonstrate that the interventions employed are responsible for the improvement in behavior.

(2) **"Behavior Analyst Certification Board (Board)"** means the nationally accredited Behavior Analyst Certification Board.

(3) **"Board Certified Behavior Analyst (BCBA)"** means an individual who is certified by the nationally accredited Board and is licensed by ~~OKDHS DDSD~~DHS DDS to provide applied behavior analysis services in Oklahoma.

(4) **"Board Certified Assistant Behavior Analyst (BCaBA)"** means an individual who is certified by the nationally accredited Board and is certified by ~~OKDHS DDSD~~DHS DDS to provide applied behavior analysis services in Oklahoma.

(5) **"Co-employed relationship"** means the BCBA and BCaBA are employed by the same employer.

(6) **"Employee-employer relationship"** means the BCBA is the employer of the BCaBA.

(7) **"Human services professional"** means an individual licensed or certified ~~by~~in Oklahoma as a licensed:

(A) physical therapist or physical therapist assistant;

(B) occupational therapist or occupational therapist assistant;

(C) clinical social worker;

(D) masters social worker;

(E) social work associate;

(F) psychologist or health service psychologist;

(G) speech pathologist;

(H) audiologist;

(I) professional counselor or professional counselor candidate;

(J) marital and family therapist or marital and family therapist candidate; or

(K) behavioral practitioner or behavioral practitioner candidate.

(8) **"Licensed behavior analyst"** means an individual who is certified by the nationally accredited Board as a BCBA and is licensed by ~~DDSD~~DHS DDS to provide applied behavior analysis services in Oklahoma.

(9) **"Oklahoma Licensed Behavior Analyst Board (OLBAB)"** or **"State Board"** means the state board responsible for licensing behavior analysts and regulating the practice of applied behavior analysis professionals.

(10) **"~~Real-Time~~Real-time supervision"** means the observation of the provision of service with all parties participating in or monitoring live interactions.

(11) **"Supervisee"** means a person who acts under the extended authority of a licensed behavior analyst to provide applied behavior analysis services or a person who is training to provide such services.

(12) **"Supervision"** means the direct observation and professional guidance during the provision of service by a BCBA of a BCaBA.

(13) **"Two-way interactions"** means the observation of the provision of service using real-time visual and auditory contact through the use of technological devices.

(c) **Qualifications.**

(1) Each person wishing to practice as a ~~licensed behavior analyst~~BCBA or as a ~~certified assistant behavior analyst~~BCaBA in Oklahoma applies to ~~DDSD~~DDS using Form 06LC001E, Application for BCBA License and BCaBA Certification, and furnishes evidence that ~~such person~~he or she:

(A) is at least 21 years old;

(B) ~~has~~passed the Board examination and is certified by the Board as a BCBA or as a BCaBA, as applicable; and

(C) has not had a professional license or state certification refused, revoked, suspended, or restricted and does not have a complaint, allegation, or investigation pending in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct unless ~~DDSD~~ DDS finds that the conduct ~~has been~~was corrected or that mitigating circumstances exist that prevent resolution~~; and~~

~~(D) has at least the minimum graduate or undergraduate degree, appropriate for the level of certification, from an institution of higher learning in a qualifying field of study determined by the Board~~.

(2) No person can claim the title of ~~licensed behavior analyst~~or hold himself or herself out as being a BCBA or ~~certified assistant behavior analyst~~BCaBA unless ~~that person~~he or she meets the applicable requirements and obtains a license or certification, per this Section.

(A) Supervisees provide applied behavior analysis under the supervision of a ~~licensed behavior analyst~~ BCBA.

(B) This Section does not restrict the practice of applied behavior analysis by human services professionals, provided such individuals are working within the scope of their professions and the practice of applied behavior analysis is commensurate with their level of training and experience.

(C) ~~A violation of this subsection is punishable by a fine of not more than $500, the suspension or revocation of a license or certification issued pursuant to this~~This Section~~, or both fine and loss of licensure or certification~~ does not prohibit the practice of applied behavior analysis by a technician or family member implementing a plan within the home, acting under the extended authority and direction of a Licensed BCBA or BCaBA.

(D) A violation of this subsection is punishable by a fine of not more than $500, the suspension or revocation of a license or certification issued per this Section, or both fine, and loss of licensure or certification.

(E) DHS Legal Services may file and seek injunctive relief against any person who wrongfully holds himself or herself out as a BCBA or BCaBA, and does not in fact meet the applicable requirements set forth above, or who is not licensed or certified as a BCBA or BCaBA. The injunctive relief set forth in this Section is filed in the district court for any county wherein which the person holding himself or herself out as a BCBA or BCaBA.

(d) **Application.** Oklahoma licenses and certificates are issued for two-year terms following the initial State Board certification period~~by the Board~~.

(1) **Licensure.** A person requesting licensure provides for:

(A) ~~for~~an initial request, requires:

(i) a current national Board certification~~from the Board~~;

(ii) a ~~photo~~ copy of a valid photo identification;

(iii) Form 06LC001E;

(iv) Form 06LC002E, Professional Reference for BCBA License and BCaBA Certification; and

(v) ~~Form 06LC003E, Certification of Autism Internship/Practicum Designation for BCBA License, as applicable; and~~

~~(vi)~~ Form 06LC004E, Statement of Professional Disclosure for BCBA License and BCaBA Certification; and

(B) ~~for~~ a renewal, requires:

(i) a current copy of National Board certification~~from the Board~~;

(ii) a ~~photo~~ copy of a valid photo identification;

(iii) Form 06LC001E; and

(iv) Form 06LC004E~~; and~~

~~(C) for autism internship designation the respective institution of higher education completes Form 06LC003E, certifying the applicant has completed a 1000 hour BCBA supervised internship serving individuals with autism using evidence based applied behavior analysis approaches. A BCBA can petition OLBAB to consider professional hours of supervised autism internship outside of a institution of higher education program for consideration of alternative autism internship designation. All individuals licensed may provide applied behavior analytic service to persons with autism spectrum disorder, but only those completing the internship or approved by the OLBAB as specified in this paragraph may represent that they have the autism internship~~.

(2) **Certification.** A person requesting certification must provide for:

(A) ~~for~~ an initial request:

(i) a current copy of National Board certification~~from the Board~~;

(ii) a ~~photo~~ copy of a valid photo identification;

(iii) Form 06LC001E;

(iv) Form 06LC002E;

(v) Form 06LC004E; and

(vi) Form 06LC005E, BCaBA Professional Supervision; and

(B) ~~for~~re-certification:

(i) a current copy of National Board certification~~from the Board~~;

(ii) a ~~photo~~ copy of a valid photo identification;

(iii) Form 06LC001E;

(iv) Form 06LC004E; and

(v) Form 06LC005E.

(3) **Post-military personnel.** Pursuant to the Post-Military Service Occupation, Education and Credentialing Act, 59 O.S. § 4100.1, issuance of an Oklahoma license or certificate to post-military service members and spouses are expedited upon receipt of required application materials and verification of Board certification.

(e) **Licensure and certification.** A person licensed or certified by ~~DDSD~~DDS:

(1) maintains active status and ~~fulfill~~fulfills all requirements of national certification or recertification with the Board;

(2) conducts professional activities in accordance with standards found in the Guidelines for Responsible Conduct and Professional Disciplinary Standards established by the Board and available on their ~~Web site~~ website at www.bacb.com; and

(3) applies for license or certification renewal on or before April 30 of each odd- numbered year to continue practicing in Oklahoma.

(f) **Fees.**

(1) BCBA licensure fees:

(A) for initial licensing are pro-rated on a rounded average of $50 for each full- calendar year remaining on the national Board certification; and

(B) $100 for each two-year license thereafter.

(2) BCaBA certification fees:

(A) for initial certification are pro-rated on a rounded average of $25 for each full-calendar year remaining on the national Board certification; and

(B) $50 for each two-year certification thereafter.

(g) **Requirements of supervision.** A certified BCaBA works under the supervision of a licensed BCBA. A BCBA ~~provides~~may provide supervision to a maximum of six BCaBAs at any time. Supervision by the BCBA occurs for a minimum of two hours for each 40 hours of services provided by a BCaBA.

(1) Supervision requirements include, for:

(A) real-time supervision:

(i) a minimum of one of two supervision sessions are conducted using real-time supervision; and

(ii) not more than half of the supervisory requirements are satisfied in a group setting; and

(B) qualifying supervision beyond the requirements of real-time supervision includes:

(i) the use of two-way interactions~~,~~;

(ii) review of materials submitted by the BCaBA~~,~~; and

(iii) observation of the BCaBA demonstrating professional skills.

(2) A formal professional relationship must exist between a supervising BCBA and BCaBA ~~that~~ and may include:

(A) a co-employed relationship; or

(B) an employee-employer relationship.

(3) BCaBAs submit Form 06LC005E to OLBAB within ~~ten~~10-business days of any change in supervision status.

(h) ~~**Oklahoma Licensed Behavior Analyst Board**~~**OLBAB.**

(1) OLBAB ~~consists of~~has five members consisting of:

(A) three licensed BCBAs who may be employed by ~~OKDHS~~DHS appointed to the OLBAB by the ~~OKDHS~~DHS Director;

(B) one BCaBA who may be employed by ~~OKDHS~~DHS appointed to the OLBAB by the ~~OKDHS~~ DHS Director; and

(C) one member employed by OHCA, designated by the Oklahoma Health Care Authority (OHCA) who is a person with behavioral health expertise~~employed by OHCA~~.

(2) The chair of OLBAB is appointed by the ~~OKDHS~~DHS Director.

(3) Administrative support of the OLBAB is provided by ~~DDSD~~DDS staff as designated by the ~~DDSD~~DDS director.

(4) OLBAB meets a minimum of four times per calendar year. All meetings are subject to the Open Meetings Act, per 25 O.S. § 301-314.

(5) Travel expenses for members of OLBAB are reimbursed, per 74 O.S. §~~.~~500.4.

(6) OLBAB maintains a list of all persons licensed or certified to provide behavior analytic services in Oklahoma and provides ~~a copy of the list~~copies to ~~any~~ interested ~~person~~persons upon written request.

(i) **Ethics.**

(1) Any person licensed or certified by ~~DDSD~~DDS as either a BCBA or a BCaBA reports to the state Board within five-business days any sanction, denial of initial or renewal certification, revocation, suspension, or any other limitation of license or certification or combination of national Board sanctions~~by the Board~~. ~~If~~When a person loses national Board licensure or certification for any reason, he or she immediately forfeits the Oklahoma license or certification and must notify OLBAB within five-business days of such ~~notice from the~~ national Board action and must immediately stop providing BCBA or BCaBA services in Oklahoma.

(2) Grounds for forfeiture or non-renewal of a license or certification for practice in Oklahoma include:

(A) obtaining or attempting to obtain a license or certification by making a false or misleading statement, failure to make a required statement, or fraud or deceit in any communication to OLBAB;

(B) gross or repeated negligence, incompetence, misconduct, or malpractice in professional work~~,~~ including, but not limited to:

(i) any physical or mental condition that currently impairs competent professional performance or poses a substantial risk to the recipient of behavior analysis services;

(ii) professional conduct that constitutes an extreme and unjustified deviation from the customary standard of practice accepted in the applied behavior analytic community and creates a serious risk of harm to or deception of service recipients;

(iii) abandonment of a service recipient resulting in the termination of imminently needed care without adequate notice or provision for transition;

(iv) professional record keeping or data collection that constitutes an extreme and unjustified deviation from the customary standard of practice for the field, or deceptively altering service recipient's records or data;

(v) engaging in blatant fraud, deception, misrepresentation, false promise or pretense, intimidation in the practice of applied behavior analysis, or in solicitation of service recipients; ~~and~~or

(vi) the unauthorized material disclosure of confidential service recipient information;

(C) limitation, sanction, revocation, or suspension by a health care organization, professional organization, or other private or governmental body, relating to behavior analysis practice, public health or safety, or behavior analysis certification;

(D) any conviction of a felony or misdemeanor directly relating to behavior analysis practice or public health or safety; or

(E) failure to adequately supervise or be supervised in accordance with the BACB Standards for Supervision.

(3) Applicants and persons holding a current license or certificate reports to the OLBAB within 30-calendar days of occurrence:

(A) a change in name, address, or other vital information;

(B) the filing of any criminal or civil charges;

(C) the initiation of any disciplinary charges, investigations, or findings and/or sanctions by a health care organization, federal or state agency, or other professional association; and

(D) any other change in information provided by the applicant or person holding a current license or certificate to the OLBAB.

(j) **Complaint investigation.** All complaints regarding unprofessional conduct of a BCBA or BCaBA are submitted to OLBAB in writing. The ~~program administrator for the OKDHS DDSD~~DDS Quality Assurance ~~Program~~programs administrator assists ~~OLBAB~~ with investigations upon request and reports any findings to the Board for action.

(k) **Sanctions.** Sanctions are determined by the State Board.

[OAR Docket #19-633; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 110. LICENSING SERVICES

[OAR Docket #19-635]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-5 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-8.6 [AMENDED]
340:110-1-9 [AMENDED]
340:110-1-15 [AMENDED]
340:110-1-17 [AMENDED]
Part 3. Licensing Services-Residential Care and Agencies
340:110-1-54 [AMENDED]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 15. Requirements for Child Care Centers, Day Camps, Drop-In Programs, Out-of-School Time Programs, Part-Day Programs and Programs for Sick Children
340:110-3-281.3 [AMENDED]
340:110-3-284.2 [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 3. Requirements for Adoption Agencies
340:110-5-30 [AMENDED]
Part 5. Requirements for Foster Home Agencies
340:110-5-59 [AMENDED]
340:110-5-61.1 [AMENDED]
(Reference WF 18-15)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 10 O.S. §§ 403, 404, 405.4, and 406 of the Oklahoma Child Care Facilities Licensing Act.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019
COMMENT PERIOD:
January 15, 2019 through February 14, 2019
PUBLIC HEARING:
February 26, 2019
ADOPTION:
February 27, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 16, 2019
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-5 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-8.6 [AMENDED]
340:110-1-9 [AMENDED]
340:110-1-15 [AMENDED]
340:110-1-17 [AMENDED]
Part 3. Licensing Services-Residential Care and Agencies
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340:110-3-284.2 [AMENDED]
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Part 3. Requirements for Adoption Agencies
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Part 5. Requirements for Foster Home Agencies
340:110-5-59 [AMENDED]
340:110-5-61.1 [AMENDED]
(Reference WF 18-15)

Gubernatorial approval:
December 17, 2018

Register publication:
36 OK Reg 181

Docket number:
18-822

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:

The passage of SB 907 amended the Oklahoma Child Care Facilities Licensing Act, Section 403 of Title 10 of the Oklahoma Statutes (10 O.S. § 403). Statutory amendments provide licensing exemptions for: (1) accredited or non-profit affiliated summer or after-school programs; and (2) facilities operating for less than 10 weeks annually.

The passage of HB 2524 amended the Oklahoma Child Care Facilities Licensing Act, 10 O.S. § 406. Statutory amendments establish an anonymous system for reporting and investigating retaliation complaints or grievances by a facility against Oklahoma Department of Human Services (DHS) employees.

The passage of HB 2691 amended the Oklahoma Child Care Facilities Licensing Act, 10 O.S. § 404. Statutory amendments require the Child Care Advisory Committee (CCAC) to designate two members to serve on the Child Care Services (CCS) Quality Rating and Improvement System (QRIS) administrative review panel.

The passage of HB 2692 amended the Oklahoma Child Care Facilities Licensing Act, 10 O.S. § 405.4. Statutory amendments provide for a two-year probationary period for master teachers to fulfill educational qualifications.

The proposed revisions to Chapter 110, Subchapter 1, Part 1 amend CCS policy to align with legislative mandates of SB 907 and HB 2524, 2691, and 2692 providing procedures for: (1) additional licensing exemptions for summer and after-school programs; (2) procedures for investigating complaints of retaliation or grievances by a facility against DHS employees; (3) two members of CCAC to serve on QRIS administrative review panel; and (4) providing a two-year probationary period for master teachers to fulfill educational qualifications. Licensed child care programs impacted by the proposed amendments include: (1) family child care homes; (2) child care centers; (3) day-camps; (4) drop-in programs; (5) out-of-school time programs; (6) part-day programs; and (7) programs for sick children.

The proposed revisions to Chapter 110, Subchapter 1, Part 3 amend CCS residential and child-placing policies aligning with HB 2524 legislative mandates providing procedures for investigating retaliation complaints or grievances by a facility against DHS employees. Licensed programs impacted by the proposed amendments include residential child care programs and child-placing agencies.

The proposed revisions to Chapter 110, Subchapter 3, Part 15 amend CCS licensing requirements for: (1) child care centers; (2) day-camps; (3) drop-in programs; (4) out-of-school time programs; (5) part-day programs; and (6) programs for sick children aligning with HB 2692 for a two-year probationary period for master teachers to fulfill educational qualifications. Licensed child care programs impacted by the proposed amendments include: (1) child care centers; (2) day-camps; (3) drop-in programs; (4) out-of-school time programs; (5) part-day programs; and (6) programs for sick children.

The proposed revisions to Chapter 110, Subchapter 5, Part 9 amend CCS child-placing agency licensing requirements to reflect: (1) CWS policy for alternate care arrangements and number of foster children placed in a foster home; and (2) ICPC adoptive family assessment requirements. Licensed child care programs impacted by the proposed amendments include child-placing agencies.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. LICENSING SERVICES - CHILD CARE

340:110-1-5. Inquiries

(a) **Inquiries.** An inquiry regarding ~~licensing~~Licensing child care facilities is referred to the ~~licensing~~Licensing staff in ~~whose~~the geographical area where the inquirer is located.

(1) The referral includes the name, address, ~~telephone~~phone number, and type of care the ~~facility~~program is ~~giving~~providing or planning to ~~give~~provide.

(2) ~~Upon receipt of an~~On inquiry receipt, the ~~licensing~~Licensing staff provides the inquirer with ~~a copy of~~ the applicable Licensing requirements and, when appropriate, ~~refers facilities~~referrals to other agencies involved in regulating child care facilities, such as the fire department, health department, and local city regulatory offices.

(3) When the inquirer ~~has informed licensing staff they are~~is currently providing child care ~~for children~~, procedures in Oklahoma Administrative Code(OAC) 340:110-1-13 are followed. Licensing informs the inquirer they are not to provide child care ~~of children~~ without permission to operate from ~~Oklahoma~~ Child Care Services ~~(OCCS)~~(CCS).

(b) **Tribal and federal facilities.** ~~Child care facilities on Indian tribal land do not require a state license but may request licensure. Facilities that are licensed by a tribe with whom OCCS has a cooperative licensing agreement and that care only for Indian children, do not require a state license, but may request licensure.~~Tribal and federal child care facilities not requiring a state license but may request licensure are:

(1) on Indian tribal land;

(2) licensed by a tribe, with a CCS cooperative licensing agreement; and

(3) operating on military bases or federal property.

~~(c) **Federal facilities.** Facilities operated on military bases or on federal property are exempt.~~

(~~d~~c) **In-home caregiver.** Adult and Family ~~Support~~ Services (AFS) Child Care Subsidy approves contracted child care when care is provided in the child's own home~~. No~~ and no license is required~~for this type of care~~.

(~~e~~d) **Inquiry records.** Inquiry records are maintained in the ~~licensing~~Licensing staff's office. Inquiry information is ~~sent~~provided to the supervisor on request.

(~~f~~e) **Request for licensure.** When the inquirer indicates an interest in becoming licensed, ~~the licensing~~Licensing staff:

(1) determines the necessity for a license according to the Oklahoma Child Care Facilities Licensing Act, Section 403 of Title 10 of the Oklahoma Statutes (10 O.S. § 403). Additional exemptions ~~for programs that are~~ not designed or intended for child care include:

(A) programs ~~that operate~~operating less than ~~eight~~10 weeks annually;

(B) summer programs ~~that operate~~operating less than eight hours per day;

(C) programs serving children 3 years of age and older, offering elementary education in kindergarten through third grade;

(D) summer youth camps, summer programs, or after-school programs for children who are at least 4 years of age, accredited by a national standard-setting agency or church camp accreditation program or are accredited by, chartered by, or affiliated with a national non-profit organization;

(E) programs providing care and supervision for school-aged children only in a center-based program for 21 or fewer hours per week and located in a county with a population of less than 100,000, according to the latest Federal Decennial Census;

(~~C~~F) programs where children are limited from enrolling in multiple sessions because of the type of activity or ages accepted;

(~~D~~G) programs where children are not enrolled by the parents and are free to come and go;

(~~E~~H) programs including family child care homes ~~that operate,~~providing care and supervision for 15 or fewer hours per week~~or less~~; and

(~~F~~I) sponsors ~~that operate~~operating two or more programs in the same building ~~if~~when each operates 15 hours or less per week;

(2) reviews the Licensing requirements with the inquirer ~~to help decide whether requirements can be met~~for determining compliance;

(3) ascertains the inquirer's qualifications ~~of the inquirer~~ to operate a ~~facility~~program; and

(4) provides program consultation ~~to assist in the development of a child care facility that provides~~ regarding quality care.

340:110-1-8.3. Certification of programs to receive a differential quality rating and improvement level

(a) **Purpose.** The differential quality rating and improvement system was developed to improve the overall quality of care by increasing the professional development and education of child care providers and to provide the public with a method to evaluate child care. Certification is required for a program to receive a differential quality ~~rate~~ rating for children whose families are receiving subsidized child care benefits through the Oklahoma Department of Human Services (DHS).

(b) **Criteria for child care centers and homes certification levels.** The certification process and quality rating and improvement criteria for child care programs are described in Oklahoma Administrative Code (OAC) 340:110-1-8.3 through 340:110-1-8.10.

(c) **Request for star certification process.** The process in (1) through (4) of this subsection is required for certification.

(1) **Criteria for one star centers and homes.** A program operating on a permit or license is automatically designated as a one star program.

(2) **Criteria for one star plus centers and homes.** For approval as a one star plus program, the owner and director or primary caregiver, when applicable, must complete and submit Form 07LC025E, Request for Child Care Center Star Certification, or Form 07LC027E, Request for Family Child Care Home Star Certification, and:

(A) meet all criteria described in (b) of this Section; and

(B) when licensed as a child care center, meet at least the minimum required number of master teachers, per applicable Licensing requirements and are not eligible for master teacher probationary periods.

(3) **Criteria for two star centers and homes.** For approval as a two star program, the owner and director or primary caregiver, when applicable, must complete the appropriate request for star certification, and meet:

(A) all one star plus and two star criteria described in (b) of this Section; or

(B) ~~licensing~~Licensing status and compliance, per OAC 340:110-1-8.4, and provide documentation the program is:

(i) accredited by a national accrediting ~~body~~organization approved by Child Care Services (CCS); or

(ii) a Head Start grantee and compliant with Head Start Performance Standards.

(4) **Criteria for three star centers and homes.** For approval as a three star program, the owner and director or primary caregiver, when applicable, must:

(A) complete the appropriate request for star certification; and

(B) meet one star plus and two star criteria described in (b) of this Section, and be:

(i) accredited by a national accrediting ~~body~~organization approved by CCS; or

(ii) a Head Start grantee and compliant with Head Start Performance Standards.

(d) **Approval for certification for centers and homes.** The procedures in this subsection are followed for initial approval and requests for higher star certification level.

(1) The owner and director or primary caregiver, when applicable, submits the appropriate request for star certification~~,~~ and required documentation to CCS.

(2) The stars outreach specialist determines when certification criteria are met by reviewing the case record and submitted documentation. When it has been four months since the last monitoring visit, the stars outreach specialist requests Licensing staff ~~conduct~~conducts a full-monitoring visit. ~~The~~Prior to approval, the stars outreach specialist reviews all information consulting with Licensing staff and the stars program administrator or designee as needed~~, prior to approval~~.

(A) The monitoring visits and substantiated complaints for the last 24 months of operation are reviewed for determination of criteria compliance. The request may be denied when ~~there are~~the program has:

(i) numerous, repeated, or serious non-compliance, per OAC 340:110-1-8.4~~,or~~;

(ii) a single serious incident resulting in injury or imminent risk of harm to a child within the 24-month period;

(iii) an Emergency Order or notice of proposed request for license denial or license revocation issued; or

(iv) a consent agreement, per OAC 340:110-1-9.5.

(B) When the program meets the criteria, the stars outreach specialist provides a letter confirming the approval and the effective date, and updates the database. When numerous, repeated, or serious non-compliance was identified during case review for the star certification request, the letter ~~includes a statement that~~states these non-compliances are considered, and may result in star certification reduction when subsequent serious non-compliances occur.

(C) When the program fails to meet the criteria, the stars outreach specialist provides a letter identifying criteria not met. The request for star certification is also reviewed determining if another star certification level can be met and updating the database accordingly.

(D) The owner and director or primary caregiver, when applicable, may reapply when criteria are met. When the request for a higher star certification level is denied due to numerous, repeated, or serious non-compliance with ~~licensing~~Licensing requirements, the program is not approved for a higher star certification level prior to six months after the ~~certified~~program receives the denial letter ~~has been received~~by certified mail. The regional programs manager (RPM) may reduce the six-month waiting period based on ~~licensing~~Licensing record evaluation, corrective action written documentation, and Licensing staff observation and documentation of substantial compliance improvement. The RPM provides the program written notification ~~to the program~~regarding reduced timeframes.

(E) The owner may withdraw the request for star certification prior to denial.

(F) The owner may request a reduction in star certification level. The request must be made in writing to CCS. Quality rating and improvement system (QRIS) personnel or the designee provides a letter to the owner documenting the reduction request, including the new star certification level effective date, and updates the database with the program's new star certification level. A reduction request does not constitute a reduction in star certification level, per (h) of this Section.

(e) **Complaint investigations.** Pending complaint investigations may impact star certification request approval.

(f) **Ongoing review.** The procedures in this subsection are followed for ongoing review.

(1) **Program notification to CCS.** The owner, director, or primary caregiver is required to notify CCS within five program-business days of changes affecting the program's star certification level. The case is reviewed by Licensing staff, determining whether criteria continue ~~to be~~being met.

(2) **Periodic certification reviews.** Licensing staff completes a minimum of three reviews annually, using Form 07LC026E, Child Care Center Star Certification Review, or Form 07LC028E, Family Child Care Home Star Certification Review. The three reviews consist of two partial- and one full-star certification criteria reviews. Programs:

(A) operating less than a full-year or having a cooperative licensing agreement with a tribal program are required to have a minimum of one partial- and one full-star certification reviews annually; and

(B) exempt from state licensure including federal or tribal programs, must have all applicable stars criteria reviewed at least annually.

(3) **Master teacher change.** When an individual replaces a master teacher:

(A) Form 07LC031E, Probationary Master Teacher Agreement, is completed;

(B) the probationary master teacher is granted a one-year probationary period to fulfill the master teacher educational qualifications per applicable Licensing requirements and QRIS criteria; and

(C) Licensing may extend the probationary period for a second year, providing the probationary master teacher is actively pursuing educational qualifications as identified on Form 07LC031E.

(~~3~~4) **Non-compliance.** The star certification level of a one star plus, two, or three star program may be reduced, when a program has:

(A) serious non-compliance with ~~licensing~~Licensing requirements, within a 24-month period;

(B) a serious incident resulting in injury or imminent risk of harm to a child; or

(C) violations with other star certification criteria.

(~~4~~5) **Violations.** When violations of certification criteria are documented, or the program notifies CCS of criteria changes, the procedures in (A) through (E) of this paragraph are followed.

(A) Licensing staff provides written notification documenting the violations, including a statement that a reduction in the star certification level may occur, when:

(i) the program ~~has~~had serious non-compliances with ~~licensing~~Licensing requirements;

(ii) a serious incident occurs resulting in injury or imminent risk of harm to a child;

(iii) violations are not corrected in the agreed on time frame; or

(iv) an Emergency Order or notice of proposed request for license denial or revocation ~~of license~~ is issued.

(B) Licensing staff documents a plan of correction for each star criteria violation noted during the criteria

review indicating a specific agreed on correction time frame.

(C) When previous criteria ~~violation~~violations were not corrected ~~by~~in the agreed on time frame, an additional plan of correction may be documented indicating a reduced correction time frame.

(D) When the program fails to meet additional plans of correction, Licensing staff may submit a referral for star certification reduction or notify the program of a request for extension of time to comply, including timeframes.

(E) When the program does not apply for an extension of time to comply, there is no acceptable plan of correction; Licensing staff may submit a referral for star certification reduction.

(~~5~~6) **Follow-up of criteria violations.** Licensing staff is responsible for verifying star certification criteria violations are corrected as determined by the approved plan of correction.

(~~6~~7) **Written notice.** Licensing staff provides written notice that star certification criteria are not being met, when:

(A) there is serious non-compliance with requirements, per OAC 340:110-1-8.4;

(B) a serious complaint that may place the children's health, safety, or well-being ~~of children~~ at imminent risk of harm is substantiated;

(C) Licensing staff have knowledge the program is not meeting star certification criteria, such as having an insufficient number of master teachers; and/or

(D) a program fails to employ a qualified director for six months or more.

(g) **Extension of time to comply.**

(1) A request for an extension of time to comply may be submitted when violations of star criteria cannot be corrected within the agreed on plan of correction time frame.

(2) A request for an extension of time to comply to meet ~~licensing~~Licensing requirements, such as director qualifications, is not approved.

(3) The owner, director, or primary caregiver submits Form 07LC074E, Request for Extension of Time to Comply, no later than 10-calendar days after the plan of correction expires.

(4) The decision to approve or deny an extension of time to comply is made by the stars program administrator or designee. One or more discretionary extensions of time to comply may be granted. Approval of an extension of time to comply does not set a precedent and each request is independently evaluated. The owner and director or primary caregiver, when applicable, is notified in writing of the decision.

(h) **Reduction in one star plus, two, and three star certification levels.**

(1) A reduction occurs when CCS issued a written Emergency Order or notice of proposed request for license denial or license revocation~~of license~~.

(2) A reduction may occur, when:

(A) the program ~~has~~had serious non-compliance with ~~licensing~~Licensing requirements within a 24-month time frame;

(B) a serious incident occurs resulting in injury or imminent risk of harm to a child;

(C) violations are not corrected within the agreed on time frame; or

(D) a program fails to employ a qualified director for six months or more.

(3) The procedures in this subsection are followed when a reduction is warranted.

(A) Licensing staff reviews the case with the supervisor and RPM. The decision to make a referral to the stars program administrator or designee is made by the RPM and referrals are made in writing to the stars program administrator or designee. The RPM may enter ~~into~~in an agreement for an alternative settlement with the owner of a program in lieu of reduction. The alternative settlement documents how the program will go above and beyond minimum ~~licensing~~Licensing requirements and ensure a higher standard or quality of care. It is the RPM's decision to accept or deny the alternative settlement.

(B) When a reduction is warranted, the stars program administrator or designee provides the owner and director or primary caregiver, when applicable, a ~~certified~~ letter sent by certified mail documenting the reduction in star certification level and notifying the program of the right to request an administrative review of the decision.

(C) The certified mail delivery receipt card is addressed to return to the CCS director or designee.

(D) In order to receive an administrative review, the owner must submit a written request to the CCS director or designee within 15-calendar days of reduction notification letter receipt.

(E) The request must include written documentation stating the program's grounds for appeal.

(4) QRIS personnel or a designee updates changes in the star certification level and payment rate following verification of certified letter receipt and the administrative review, when requested.

(5) The ~~purpose of the~~ administrative review process includes determining when a star certification level reduction was in accordance with DHS policy and substantially supported by the evidence. The procedures in (A) through (C) of this paragraph are followed when an administrative review is requested.

(A) Within 30-calendar days of receiving the request for an administrative review, a letter is provided notifying the owner and program of the administrative review~~date, time, and location~~. Prior to the administrative review, the owner is provided at least a 14-calendar ~~days~~day written notice. All correspondence indicates the administrative review date, time, and location. The owner may submit written documentation prior to, or at the beginning of, the

administrative review, with copies provided to all representatives.

(B) The ~~stars~~administrative review panel~~, consisting~~:

(i) provides review;

(ii) consists of ~~two~~one DHS staff not involved in the decision to reduce the star certification level; and ~~one~~

(iii) includes two Child Care Advisory Committee ~~member having no relationship to the program, conducts the review~~(CCAC) members, one of which is a center owner or operator, per OAC 340:110-1-17.

(C) The stars review panel makes a determination affirming or reversing the CCS decision at the administrative review. Time constraints or the complexity of issues may require the panel to take a matter under advisement. ~~Written findings are~~The determination decision is completed within 10-calendar days from the panel review date.

(6) The owner and director or primary caregiver, when applicable, may reapply for a higher star certification level when criteria are met. When the star certification level is reduced due to serious non-compliance with ~~licensing~~Licensing requirements, the program is not approved for a higher star certification level for six months after receiving the ~~certified~~ reduction letter, sent by certified mail.

(i) **Change in ownership.** When there is a change in ownership or form of business entity of a program, the case is closed and the star certification level is removed, unless otherwise determined, per OAC 340:110-1-9. For approval as a higher star certification level, the new owner and director or primary caregiver, when applicable, completes and submits the appropriate star certification request, meeting all the criteria applicable to the requested star certification level.

(j) **Transitional change of ownership.** When a program requests a transitional change of ownership (1) through (7) of this subsection are followed.

(1) Licensing staff conducts a full-star criteria review within five DHS-business days:

(A) verifying all applicable criteria are met; and

(B) obtaining the appropriate request for star certification completed by the prospective owner and director or primary caregiver, when applicable.

(2) The stars outreach specialist reviews the request for star certification completed by the prospective owner and verifies star level certification criteria are met per (d) of this Section.

(3) Transitional change of ownership procedures are followed, per OAC 340:110-1-9.

(4) Periodic and ongoing criteria reviews are conducted and maintained, per (f) of this Section.

(5) All star certification criteria reviews and correspondence are provided to both the current and prospective owners.

(6) Change of ownership procedures are followed, per (i) of this Section by the end of 90-calendar days, when applicable.

(7) When programs notify Licensing that transitional change of ownership is no longer proceeding, Licensing staff verifies program operation status and consults with the supervisor for appropriate action.

(k) **Inactive status.** When a program is determined inactive, per OAC 340:110-1-9, all applicable star certification criteria must be reviewed at least annually.

(l) **Address change.** When the ~~program~~program's address changes~~,~~ Licensing staff completes the appropriate star certification review, verifying compliance with criteria at the new address. Licensing staff determines ~~if~~when a partial-or full-star certification review is conducted.

(m) **Record-keeping.** Periodic certification review, request forms, and supporting documentation are maintained in the case file or in a separate open-record file. When maintained, any information, including children's photographs ~~are~~is kept confidential,per OAC 340:110-1-14.

340:110-1-8.6. Director, personnel, and primary caregiver qualifications for differential quality rating and improvement certification criteria

(a) **Master teacher and primary caregiver qualifications for two and three star levels.** Required criteria listed in (1) - (3) of this subsection include:

(1) a current Oklahoma Professional Development Ladder (OPDL) certificate of Level 3, specifically met by an Oklahoma Competency Certificate with a Master Teacher emphasis, or Level 4 or higher;

(2) ~~trained~~completed training in Oklahoma's Early Learning Guidelines (ELG); however, new master teachers and primary caregivers hired or assuming the responsibilities after certification are trained within 90-calendar days; and

(3) employment on-site, full-time; however, out-of-school time master teachers are on-site at least 50 percent of ~~the~~ weekly-operating hours.

(b) **Master teachers required for two and three star centers.** There is a full-time master teacher for every 30 children of the licensed capacity.

(1) Out-of-school time programs must have a master teacher for every 40 children of the licensed capacity.

(2) An individual is not counted as a master teacher or primary caregiver in more than one program, unless the scheduled hours of employment in each program do not overlap at any given time.

(3) When an individual replaces a master teacher and does not meet educational qualifications, refer to Oklahoma Administrative Code (OAC) 340:110-1-8.3(f)(3).

(c) **Director as master teacher.** The director may be counted as a master teacher when meeting master teacher qualifications in (a) of this Section, regardless of the program's licensed capacity.

(d) **Master teacher responsibilities.** Master teachers work directly with children and support other teaching personnel

with responsibilities, such as program development, weekly lesson plans, use of space and equipment, interactions with parents, and program evaluation.

(e) **Director responsibilities.** An individual is not counted as director in more than one program.

340:110-1-9. Case management

(a) **Periodic monitoring visits.** Licensing staff conducts a minimum of three, unannounced monitoring visits to programs operating a full-year, and two, unannounced monitoring visits annually to programs operating less than a full-year. Licensing staff varies the monitoring visit times, including a lunch observation and an evening visit to child care centers with extended hours.

(b) **Ongoing monitoring.** During monitoring visits, Licensing staff observes the entire facility, including the outdoor play space and transportation vehicles, when available. At, or subsequent to each monitoring visit, Licensing staff verifies:

(1) compliance with ~~licensing~~Licensing requirements;

(2) compliance with stars criteria, per Oklahoma Administrative Code (OAC) 340:110-1-8.3;

(3) new personnel records including personnel sheets and compliance with background investigations, per OAC 340:110-1-8.1;

(4) personnel professional development records;

(5) the Oklahoma Department of Human Services (DHS) database on applicable individuals, per OAC 340:110-1-8.1;

(6) fire and health inspections within the last 24 months, when applicable;

(7) Form 07LC092E, Insurance Verification, within the last 12 months, or posting of Form 07LC093E, Insurance Exception Notification; and

(8) other documentation requiring renewal.

(c) **Technical assistance and consultation.** Licensing staff provides:

(1) technical assistance to licensees assisting them in meeting minimum requirements; and

(2) consultation on various aspects of quality child care.

(d) **Agreements with tribal licensing programs and other monitoring agencies.** DHS may enter into a cooperative licensing agreement with a tribal licensing program or other monitoring agency.

(e) **Equipment inventory.** Licensing staff completes Form 07LC006E, Equipment Inventory for Child Care Programs, prior to license issuance. Licensing staff or the program may complete the appropriate equipment inventory prior to a change in class and prior to a capacity increase in a child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children. Inventories document the available equipment and the items needed to comply with the equipment requirements. Licensing staff may conduct a complete inventory when concern exists about the availability of required equipment.

(f) **Address change.**

(1) When a program moves to a new address, Licensing staff:

(A) obtains an updated Form 07LC004E, Request for License Child Care Program;

(B) conducts a monitoring visit verifying that the new location meets ~~licensing~~Licensing requirements;

(C) obtains new fire and health inspections for a child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children, when applicable;

(D) obtains Oklahoma Department of Environmental Quality approval, when applicable;

(E) completes Form 07LC057E, Physical Plant, with required calculations; and

(F) requests a permit or license ~~be issued~~issuance reflecting the address change.

(2) When an address change involves care provided in a location other than the primary caregiver's residence, refer to OAC 340:110-1-6(a)(3).

(g) **Program name change.** When there is a program name change, Licensing staff verifies there is no ownership change, and documents the name change in the case file and database. A new Form 07LC004E, Request for License Child Care Program, reflecting the program name change is completed. Licensing staff requests a permit or license ~~be issued~~issuance reflecting the new program name.

(h) **Director change.** When there is a director change, Licensing staff:

(1) verifies the new director meets qualifications;

(2) obtains the applicable page of Form 07LC004E, Request for License Child Care Program, completed by the new director;

(3) obtains references;

(4) obtains an appropriate, completed Form 07LC117E, Compliance Review for Child Care Programs, from the director, when the director has no previous director experience;

(5) notifies the new director of current personnel, who are granted waivers; and

(6) documents the information on Form 07LC080E, Licensing Services Supplemental Information.

(i) **Master teacher change.** When an individual replaces a master teacher:

(1) Form 07LC031E, Probationary Master Teacher Agreement, is completed;

(2) the probationary master teacher is granted a one-year probationary period to fulfill the master teacher educational qualifications per applicable Licensing requirements and Quality Rating and Improvement System (QRIS) criteria, when applicable; and

(3) Licensing may extend the probationary period for a second year, providing the probationary master teacher is actively pursuing educational qualifications as identified on Form 07LC031E.

(~~i~~j) **Primary caregiver change.** When there is a primary caregiver change, Licensing staff:

(1) verifies the primary caregiver meets qualifications;

(2) obtains the applicable page of Form 07LC004E, Request for License Child Care Program, completed by the new primary caregiver;

(3) obtains references;

(4) notifies the new primary caregiver of current personnel, who are granted waivers; and

(5) documents the information on Form 07LC080E, Licensing Services Supplemental Information.

(~~j~~k) **Facility household change.** Facility household changes are documented on the monitoring summary. Form 07LC096E, Criminal History Review Request for Programs, must be submitted prior to a new adult residing in the facility. When there is a new adult residing in a facility, the required documentation includes:

(1) the applicable page of Form 07LC004E, Request for License Child Care Program, completed by the new adult;

(2) background investigations, per OAC 340:110-1-8.1; and

(3) a DHS database search.

(~~k~~l) **Change in ownership.** When there is a change in ownership or a change in the form of business organization of a child care program, the case is closed and a new Form 07LC004E, Request for License Child Care Program, is obtained. Prior to permit or license issuance, the program must be in compliance with background investigations, per OAC 340:110-1-8.1. A permit may be issued when a monitoring visit without numerous, repeated, or serious non-compliances was conducted within the past 60-calendar days. A full-monitoring visit is conducted within 14-calendar days of change of ownership verifying the new owner meets minimum ~~licensing~~Licensing requirements.

(~~l~~m) **Transitional change of ownership.** When a program requests a transitional change of ownership (1) through (6) of this subsection are followed.

(1) Licensing staff conducts a monitoring visit within five DHS-business days, verifying compliance with ~~licensing~~Licensing requirements and, obtains:

(A) Form 07LC015E, Transitional Change of Ownership, completed by the current and prospective owners;

(B) Form 07LC004E, Request for License Child Care Program, completed by the prospective owner; and

(C) updated program personnel information on Form 07LC002E, Personnel Summary, verifying that the prospective owner employs the same personnel as the current owner, at the time of transitional change of ownership.

(2) Transitional change of ownership procedures for star certification are met, per OAC 340:110-1-8.3; when applicable.

(3) Periodic and ongoing monitoring is maintained, per (a) and (b) of this Section.

(4) All ~~licensing~~Licensing monitoring and correspondence are provided to both the current and prospective owners.

(5) Change of ownership procedures are followed, per ~~(k)~~(l) of this Section by the end of 90-calendar days, when applicable.

(6) When programs notify Licensing that transitional change of ownership is no longer proceeding, Licensing staff verifies program operation status and consults with the supervisor for appropriate action.

(~~m~~n) **Change in class.** When a program requests a change in class, procedures in (1) through (2) of this subsection are followed.

(1) The case is closed and a new Form 07LC004E, Request for License Child Care Program, is required, when a:

(A) family child care home converts to a child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children; or

(B) child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children converts to a family child care home.

(2) Other requests for change in class do not require case closure and, documentation includes:

(A) a request in writing from the owner;

(B) a new Form 07LC004E, Request for License Child Care Program, with updated information;

(C) documentation that the program meets the requirements for the requested class type;

(D) the appropriate equipment inventory, when applicable;

(E) a current, approved fire inspection, when applicable;

(F) a current, approved health inspection, when applicable; and

(G) appropriate class and monitoring frequency plan database updates.

(~~n~~o) **Capacity increase or decrease.** When a program requests a capacity increase or decrease, it is documented on Form 07LC080E, Licensing Services Supplemental Information, and must be approved by the supervisor. The program must not have a history of numerous, repeated, or serious non-compliance, and provide:

(1) the reason for the increase;

(2) an updated floor plan on Form 07LC057E, Physical Plant, reflecting adequate indoor and outdoor space, toilets, and sinks for the increase and other changes;

(3) fire department approval of space not previously inspected;

(4) health approval of additional food preparation space not previously inspected;

(5) an updated equipment inventory reflecting adequate equipment for the increase; and

(6) verification of the required number of master teachers.

(~~o~~p) **Inactive programs.** A program is in inactive status when care was not provided for more than 90-calendar days.

(1) A program remaining open after 90-calendar days submits a request in writing, including a statement that the owner will notify Licensing prior to resuming care. Licensing staff verifies compliance with requirements prior to resuming care.

(2) The program is contacted by Licensing staff, a minimum of every four months by phone, letter, or email to update program status including new household members or other program changes, per ~~(j)~~(k) of this Section.

(3) Voluntary closure is discussed with the owner and an agreement to close is reached, when possible.

(4) Licensing staff visits the inactive program, at least once during the 12-month timeframe verifying compliance with ~~licensing~~Licensing requirements until closure is final or the program resumes care.

(5) When an address change occurs when a program is in inactive status, a monitoring visit is required and address change procedures are followed per (f) of this Section.

(~~p~~q) **Inactive program closure.** Procedures (1) - (4) of this subsection are followed when closing an inactive program.

(1) To verify program status, Licensing staff contacts the owner during the 12th month of inactive status.

(2) Licensing documents program status on Form 07LC080E, Licensing Services Supplemental Information, and notifies the owner the case will be closed when care does not resume, prior to the end of the 12th month.

(3) When care was not provided for 12-consecutive months or more, Licensing staff provides a letter notifying the owner of case closure within 10-calendar days of letter receipt, unless Licensing is notified care resumed.

(4) The case is closed and the owner must reapply and be approved for a new license prior to resuming care, per OAC 340:110-1-6.

(~~q~~r) **Response to a child death.** When notified of a child death while in child care, Licensing staff:

(1) completes Form 07LC079E, Child Death Report, and forwards it to the statewide licensing coordinator or designee: andz

(2) visits the program as soon as possible, unless advised otherwise by law enforcement officials.

(~~r~~s) **Serious incident reports.** The supervisor submits serious incident reports to the regional programs manager, county director, and statewide licensing coordinator.

(~~s~~t) **Self-reported incidents.** When a provider self-reports a non-compliance incident, Form 07LC080E, Licensing Services Supplemental Information, is completed and the Licensing database is updated.

340:110-1-15. Grievance policy and procedure

(a) **Grievance policy.** The program owner or director ~~of a licensed program~~ may file a grievance regarding the application of any written or unwritten policy, rule, or regulation of Child Care Services (CCS) or ~~decision by~~ a CCS employee decision affecting the program. Grievances must be requested within 30-calendar days of the documented non-compliance, ~~violation of~~ star criteria violation, or substantiated complaint allegation. A grievance is not accepted concerning an Emergency Order, ~~denial of~~ request for license denial or license revocation~~of a child care facility license~~. The procedure for appealing this action is provided in the Oklahoma Child Care Facilities Licensing Act, Section 407 of Title 10 of the Oklahoma Statutes (10 O.S. § 407)~~, the Oklahoma Child Care Facilities Licensing Act~~.

(b) **Grievance procedure.** Individuals wanting to file a grievance are encouraged to seek informal resolution of his or her concerns by contacting the appropriate ~~licensing~~Licensing supervisor, who attempts to resolve the matter.

(1) When a resolution cannot be reached at the local level or through verbal conversation with CCS State Office staff, the grievant is requested to file ~~a~~one written grievance request with the ~~licensing~~Licensing supervisor within 15-calendar days of this communication. Written grievances are forwarded when additional reviews are requested.

(2) The ~~licensing~~Licensing supervisor notifies the ~~licensing~~ regional programs manager (RPM) and statewide licensing coordinator a formal grievance was filed and efforts were made to resolve the issue. The ~~licensing~~ Licensing supervisor responds to written grievances within 10-Oklahoma Department of Human Services (DHS) business days of receipt. The grievant is informed ~~the request for~~ additional ~~reviews~~review requests must be submitted within 15-calendar days of the correspondence date.

(3) When the grievant is not satisfied with the proposed resolution, he or she may request RPM review~~by the RPM~~. The RPM responds to written grievances within 10-DHS business days of receipt. The grievant is informed ~~the request for~~ additional ~~reviews~~review requests must be submitted within 15-calendar days of the correspondence date.

(4) When the grievant is not satisfied with the proposed resolution, he or she may request ~~review by the~~ statewide licensing coordinator review. The grievant is informed he or she may request ~~review by the Peer Review Board of the~~ Child Care Advisory Committee (CCAC)~~,~~ Peer Review Board review, prior to ~~review by the~~ statewide licensing coordinator review. The statewide licensing coordinator forwards information to the Peer Review Board, when applicable or proceeds with the review.

(5) When applicable, the Peer Review Board responds to the statewide licensing coordinator with resolution advisement ~~for resolution~~ within 10-DHS business days of receipt.

(6) The statewide licensing coordinator notifies the grievant of the CCS decision within 10-DHS business days or when applicable 10-DHS business days ~~of receipt~~ of ~~the~~ Peer Review Board advisement receipt. The grievant is informed ~~the request for~~ additional ~~reviews~~review requests must be submitted within 15-calendar days of the correspondence date.

(7) When the grievant is not satisfied with the proposed resolution, he or she may request review by the CCS director, Adult and Family Service (AFS) director, and DHS Director ~~of Human Services~~ (Director), respectively. The CCS director, AFS director, and Director each respond within 10-DHS business days of receipt. The grievant is informed ~~the request for~~ additional ~~reviews~~review requests must be submitted within 15-calendar days of the correspondence date. The Director's decision is final.

~~(8) The grievant is requested to file only one written grievance. Referrals for resolution are made by the DHS staff involved in the response.~~

(c) **Grievance procedures against a CCS employee.** A child care program may file a grievance about a CCS employee who retaliated against a program or program employee, within 30-calendar days of the alleged incident. Reports are investigated regardless of the grievant's decision to remain anonymous.

(1) The grievant is referred to the appropriate supervisor, who attempts to resolve the matter.

(2) When the grievant is not satisfied with the proposed resolution at the supervisory level, the grievant is referred to the assistant licensing coordinator not within the line of supervision of the involved Licensing staff. The assistant licensing coordinator:

(A) requests the allegations be submitted in writing; however, written submission is not required;

(B) investigates the allegations; and

(C) provides written investigation results to the grievant, when contact information is available.

(3) The assistant licensing coordinator's decision is final; however, the grievant may request the CCS director review the finding.

340:110-1-17. Child Care Advisory Committee bylaws

(a) **Purpose.** The ~~purpose of the~~ Child Care Advisory ~~Committee~~Committee's (CCAC) purpose is to:

(1) carry out the provisions of the Oklahoma Child Care Facilities Licensing Act (Licensing Act), Section 404 of Title 10 of the Oklahoma Statutes (10 O.S. § 404) to:

(A) ensure ~~maintenance of~~ minimum standards maintenance for ~~the~~children's care and protection ~~of children~~ away from their homes, including:

(i) constructive programs and services ~~to meet the~~meeting each child's and family's needs~~of each child and family~~;

(ii) personnel ~~of~~having good moral character and ability ~~to care~~of caring for children;

(iii) adequate and safe housing, sanitation, and equipment;

(iv) good health care;

(v) full educational and religious opportunities;

(vi) good community relationships;

(vii) essential records and administrative methods; and

(viii) sufficient funds for sound operation;

(B) encourage and assist child care facilities toward maximum standards; and

(C) work for ~~the development of~~ sufficient and adequate child care services ~~for child care~~development through ~~joint work with~~ public and private ~~agencies~~agency partnerships;

(2) recommend child care program minimum requirements and standards ~~for child care programs~~ for ~~promulgation by the~~ Oklahoma Department of Human Services (DHS) rule promulgation. Rules are promulgated after consultation with:

(A) the Oklahoma State Department of Health (OSDH);

(B) the Oklahoma State Department of Education (OSDE);

(C) the Oklahoma State Bureau of Investigation (OSBI);

(D) the Office of the Oklahoma State Fire Marshal (OSFM);

(E) the Oklahoma Commission on Children and Youth (OCCY);

(F) the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS); and

(G) other agencies deemed necessary by DHS;

(3) serve in an advisory capacity to DHS for developing quality child care programs and services; and

(4) educate the public and consumers regarding quality child care.

(b) **Function.** The CCAC function is to:

(1) become informed ~~on~~of DHS programs and policies regarding children;

(2) express ~~the~~community's and the State of Oklahoma's needs and concerns ~~of the community and the State of Oklahoma as they relate~~relating to ~~the~~children's care and treatment~~of children~~; and

(3) express change recommendations ~~for change~~, including minimum requirement revisions ~~to minimum requirements~~ and encouraging child care maximum standards~~for child care~~.

(c) **Membership.**

(1) **Representation.** CCAC provides names for consideration of new appointments and reappointments of members to the Child Care Services (CCS) director. The CCS director in consultation with the OCCY representative ~~makes~~provides~~recommendations for~~ membership recommendations to the DHS Director. Members are appointed to serve at the pleasure of the DHS Director, based on child care expertise, experience, and leadership~~in the field of child care~~.

(A) CCAC, at a minimum, consists of 18 members.

(B) The majority are DHS-licensed program representatives~~of programs licensed by DHS to care for children~~.

(C) Other members include at least one representative from OSDH; OSDE; OSFM; tribal agencies; and CCS. These representatives are exempt from term limits.

(D) Other members include associations and agencies as recommended to the DHS Director, such as the Oklahoma Child Care Association, Oklahoma Children's Agencies and Residential Enterprises Incorporated (OK-CARE), ODMHSAS, OSBI, Oklahoma Association of Youth Services, Office of Juvenile Affairs, Early Childhood Association of Oklahoma, and Head Start.

(E) ~~A~~An OCCY representative ~~from OCCY~~ serves as an ex-officio member.

(2) **Terms of office.**

(A) ~~The~~CCAC member terms ~~of CCAC members~~ are for three years with a two-consecutive-term limit.

(B) Members may be recommended for reappointment after completing the first office term~~of office~~.

(3) **Officers.** ~~The~~CCAC officers ~~of CCAC are~~include chairperson, vice-chairperson, and secretary.

(A) **Chairperson.** The chairperson is responsible for:

(i) presiding over all meetings;

(ii) planning the meeting agenda, at least 14-calendar days in advance, in coordination with CCS;

(iii) appointing subcommittee members~~of subcommittees~~, in consultation with the CCS director and OCCY representative; and

(iv) serving as CCAC spokesperson.

(B) **Vice-Chairperson.** The vice-chairperson works closely with the chairperson, assumes ~~the responsibilities of the~~ chairperson responsibilities in his or her absence, and attends public hearings.

(C) **Secretary.** The secretary position ~~of secretary~~ is held by the CCS representative. The secretary is responsible for ~~accurately~~ recording ~~the minutes of each~~ meeting minutes and ~~making them available~~ providing them to ~~the~~ members prior to the next meeting. A permanent copy of the minutes is maintained by CCS.

(4) **Election of officers and terms of office.**

(A) Upon ~~vacancy of~~ office vacancy, the chairperson and vice-chairperson are elected by a majority member vote ~~of members~~ present during the next quarterly meeting following the office vacancy. Officers assume duties during the meeting ~~in which~~when the election is held.

(B) ~~Terms of office~~Office terms are for one year. Officers may be elected to serve in one office for a maximum of three terms.

(5) **Standing Subcommittees.**

(A) Standing subcommittees expand ~~the~~child care operator opportunity ~~for child care program operators~~ to identify quality improvement resources, express ~~concerns facing the~~ industry concerns, and recommend issues for CCAC consideration.

(i) The chairpersons of four standing subcommittees are CCAC members and are appointed by CCAC chairperson. Standing subcommittees represent:

(I) family child care homes;

(II) child care centers, day camp, drop-in, out-of-school time, ~~and~~ part-day programs, and programs for sick children;

(III) residential and child-placing agencies; and

(IV) the quality rating and improvement system (QRIS) program.

(ii) Standing subcommittee members are identified and recruited by the standing subcommittee chairpersons with CCS and OCCY consultation. Membership meets representation, per 10 O.S. § 404.

(iii) Standing subcommittees meet a minimum of twice ~~a year~~annually.

(iv) The standing subcommittee chairperson provides a written report to CCAC, at least twice ~~a year~~annually.

(v) CCS state office staff attends standing subcommittee meetings and serves as a resource.

(B) A standing membership subcommittee helps to ~~insure a~~ensure broad licensed program representation ~~of licensed programs are~~is included within CCAC. The OCCY representative serves on the standing membership subcommittee and consults with the CCS director ~~to identify~~identifying appropriate CCAC members.

(i) The ~~chairperson of the~~ standing membership subcommittee chairperson works closely with other CCAC officers and provides ~~oversight to~~ the standing membership subcommittee oversight.

(ii) The membership subcommittee meetings are held at least quarterly, prior to CCAC meetings.

(iii) The membership subcommittee chairperson provides a written quarterly report to CCAC.

(iv) The membership subcommittee recommends to CCAC:

(I) the names ~~of individuals~~ for new appointments;

(II) the re-appointment of existing members based ~~upon~~on attendance and participation on CCAC subcommittees; and

(III) a slate of officers.

(6) **Peer Review Board.** CCAC identifies members to serve on the Peer Review Board and participate in the DHS grievance process per Oklahoma Administrative Code (OAC) 340:110-1-15 and 340:110-1-54. A majority of the Peer Review Board are representatives of licensed child care facilities.

(7) **QRIS Administrative Review.** CCAC identifies two members to serve on QRIS administrative reviews per OAC 340:110-1-8.3 (h)(5)(B), with one member being a center owner or operator.

(d) **Meetings.**

(1) **Frequency.** CCAC meets quarterly. Additional meetings may be called or regular meetings cancelled ~~at~~ by the ~~discretion of the~~ chairperson and CCS representative.

(2) **Quorum.** A minimum of one third plus one member or designee, of currently appointed members, must be present for a quorum.

(3) **Voting.** All members or designees must receive CCAC orientation ~~on the goals and practices of CCAC~~ prior to voting.

(4) **Attendance.** Committee members or designees must attend at least two CCAC meetings ~~a year~~annually or may be removed from the committee at ~~the discretion of the~~ CCAC or DHS ~~Director~~Director's discretion.

(5) **Active participation.** CCAC members or designees are required to serve on subcommittees annually.

(6) **Guidelines.** ~~The practices of the~~ CCAC practices are compatible with the Licensing Act.

(7) **Rules of order.** *Robert's Rules of Order*, as amended, are used to govern the meetings.

(e) **Change of bylaws.** CCS prepares bylaw revisions based on CCS and CCAC input and recommendations. Proposed rulemaking is presented to CCAC for comment and submitted for approval through the Administrative Procedures Act rulemaking process.

PART 3. LICENSING SERVICES - RESIDENTIAL CARE AND AGENCIES

340:110-1-54. Grievance policy and procedure

(a) **Grievance policy.** The residential program or child-placing agency owner, director, or administrator ~~of a licensed child care program or agency~~ may file a grievance regarding the enforcement of any written or unwritten policy, rule, or regulation of the Child Care Services (CCS) or ~~decision by~~ a CCS employee decision affecting the program. Grievances must be requested within 30-calendar days of the documented non-compliance or substantiated complaint allegation. A grievance is not accepted concerning an Emergency Order, ~~denial of~~ request for license denial or license revocation~~of a child care program license~~. The procedure for ~~requesting a review of~~appealing this action is provided ~~for~~ in the Oklahoma Child Care Facilities Licensing Act, Section 407 of Title 10 of the Oklahoma ~~Child Care Facilities Licensing Act,~~Statues (10 O.S. § 407).

(b) **Grievance procedure.** Individuals wanting to file a grievance are encouraged to seek informal resolution of his or her concerns by contacting the programs manager, who attempts to resolve the matter.

(1) When a resolution cannot be reached at the local level or through verbal conversation with CCS State Office staff, the grievant is requested to file ~~a~~one written grievance request with the programs manager within 15-calendar days of this communication. Written grievances are forwarded when additional reviews are requested.

(2) The programs manager notifies the statewide licensing coordinator a formal grievance was filed and efforts were made to resolve the issue. The programs manager responds to written grievances within 10-Department of Human Services (DHS) business days of receipt. The grievant is informed ~~the request for~~ additional ~~reviews~~ review requests must be submitted within 15-calendar days of the correspondence date.

(3) When the grievant is not satisfied with the proposed resolution, he or she may request ~~review to the~~ statewide licensing coordinator review. The grievant is informed he or she may request ~~review by the Peer Review Board of the~~ Child Care Advisory Committee (CCAC)~~,~~ Peer Review Board review, prior to ~~review by the~~ statewide licensing coordinator review. The statewide licensing coordinator forwards information to the Peer Review Board, when applicable or proceeds with the review.

(4) When applicable, the Peer Review Board responds to the statewide licensing coordinator with ~~advisement for~~ resolution advisement within 10-DHS business days of receipt.

(5) The statewide licensing coordinator notifies the grievant of the CCS decision within 10-DHS business days or when applicable 10-DHS business days ~~of receipt~~ of ~~the~~ Peer Review Board advisement receipt. The grievant is informed ~~the request for~~ additional ~~reviews~~review requests must be submitted within 15-calendar days of the correspondence date.

(6) When the grievant is not satisfied with the proposed resolution, he or she may request review ~~to~~by the CCS director, Adult and Family Service (AFS) director and Director of Human Services (Director), respectively. The CCS director, AFS director and Director each respond within 10-DHS business days of receipt. The grievant is informed ~~the request for~~ additional ~~reviews~~review requests must be submitted within 15-calendar days of the correspondence date. The Director's decision is final.

~~(7) The grievant is requested to file only one written grievance. Referrals for resolution are made by the DHS staff involved in the response.~~

(c) **Grievance procedures against a CCS employee.** A residential program or child-placing agency may file a grievance about a CCS employee who retaliated against a program or program employee, within 30-calendar days of the alleged incident. Reports are investigated regardless of the grievant's decision to remain anonymous.

(1) The grievant is referred to the programs manager, who attempts to resolve the matter.

(2) When the grievant is not satisfied with the proposed resolution at the programs manager level, the grievant is referred to an assistant licensing coordinator. The assistant licensing coordinator:

(A) requests the allegations be submitted in writing; however, written submission is not required;

(B) investigates the allegations; and

(C) provides written investigation results to the grievant, when contact information is available.

(3) The assistant licensing coordinator's decision is final; however, the grievant may request the CCS director review the finding.

SUBCHAPTER 3. LICENSING STANDARDS FOR CHILD CARE FACILITIES

PART 15. REQUIREMENTS FOR CHILD CARE CENTERS, DAY CAMPS, DROP-IN PROGRAMS, OUT-OF-SCHOOL TIME PROGRAMS, PART-DAY PROGRAMS AND PROGRAMS FOR SICK CHILDREN

340:110-3-281.3. Personnel and non-personnel records and documentation

(a) **General.** General records and documentation requirements, per Oklahoma Administrative Code (OAC) 340:110-3-281 also apply to the items in this Section.

(b) **Personnel records.** Records are maintained for at least 12 months following the last date of employment, unless requirements specifically state otherwise. When the program is owned by a business entity with two or more programs and a general administrative office, personnel records are not required on-site, unless the requirements specifically state otherwise, provided current personnel records are made available to Licensing by the end of the next Licensing business day.

(1) **Personnel information.** The Oklahoma Department of Human Services (DHS) form is:

(A) completed by each personnel; and

(B) submitted to Licensing within two weeks of employment.

(2) **Criminal history review requests and results.** The DHS form is maintained for each required individual.

(3) **Treating medical personnel statement.** ~~Report~~The report from treating medical personnel is maintained, when required, per OAC 340:110-3-283(f).

(4) **Professional development plan.** The program maintains a current plan, when required, per OAC 340:110-3-284(d) ~~that~~and:

(A) is relevant to the roles and responsibilities for the assigned position(s);

(B) includes training regarding requirements;

(C) varies each year; and

(D) builds upon previously obtained professional development.

(5) **Probationary Master teachers.** Probationary master teachers complete the DHS form identifying educational professional development plans.

(~~5~~6) **Professional development verification.** All verification is submitted to the Oklahoma Professional Development Registry (OPDR), unless entered by an OPDR approved trainer. In addition, the program maintains, on-site:

(A) all verification, until the individual is registered on OPDR; and

(B) cardio-pulmonary resuscitation (CPR) and first aid ~~certification~~certifications.

(~~6~~7) **Orientation.** The DHS form or a program form containing the same information is maintained for each personnel.

(~~7~~8) **Compliance review.** The DHS requirements compliance review form is available.

(~~8~~9) **Higher risk qualifications.** Documentation of required certification, training, and experience is maintained for at least 12 months.

(~~9~~10) **Lifeguard certification.** Personnel who perform lifeguard duties have:

(A) CPR certification; and

(B) lifeguard certification from American Red Cross, Young Men's Christian Association (YMCA), or equivalent.

(~~10~~11) **Driver or commercial driver license.** A copy is maintained for each driver.

(~~11~~12) **Seat belt exemption.** A written statement from a licensed physician is maintained, when required, per OAC 340:110-3-305(g).

(c) **Volunteer records.**

(1) **Driver or commercial driver license.** A copy is maintained for 120-calendar days from last use of volunteer unless the document must be maintained longer due to the personnel record requirement per (3) of this subsection.

(2) **CPR and first aid ~~certification~~certifications.** Certification is maintained for 120-calendar days from last use of volunteer, unless the document must be maintained longer due to the personnel record requirement per (3) of this subsection.

(3) **Additional.** Personnel records per (b) of this Section are required when a volunteer fills another position, per OAC 340:110-3-284.1 through 340:110-3-284.4, and are maintained for 12 months from last use of the volunteer. However, personnel records are not required when a volunteer only fills the driver position and transports children on an irregular basis.

340:110-3-284.2. Teaching personnel

(a) **General.** In addition to the position specific requirements in this Section, personnel meet the general requirements per Oklahoma Administrative Code (OAC) 340:110-3-284.

(b) **Master teachers.** The program employs or uses at least the minimum number of required individuals or volunteers meeting the position specific requirements in (1) through ~~(5)~~(6) of this subsection.

(1) **Required master teachers.** At least one master teacher is required for every 60 children of the licensed capacity. Only the required number of master teachers are required to meet all of the master teacher requirements. However, all master teachers meet cardio-pulmonary (CPR) and first aid certification requirements in ~~(5)~~(6) of this subsection.

(2) **Position specific qualifications.** Master teachers:

(A) are at least 18 years of age;

(B) have at least a high school diploma, General Education Development (GED), or Licensing approved equivalent; and

(C) have a current Oklahoma Professional Development Ladder (OPDL) certificate, per OAC 340 Appendix FF - Oklahoma Professional Development Ladder of:

(i) Level 3, specifically met by an Oklahoma Competency Certificate with a Master Teacher emphasis; or

(ii) Level 4 or higher.

(3) **Probationary master teachers.** Directors may request a one-year probationary period for personnel replacing master teachers not meeting educational criteria per (2)(C) of this subsection.

(A) Probationary master teachers:

(i) complete the DHS form for the master teacher educational professional development plan, per OAC 340:110-3-281.3(b); and

(ii) are listed on the Oklahoma Professional Development Registry (OPDR). No specific level is required; however, OPDL timeframes and certificates are met, per OAC 340:110-3-284(b).

(B) Licensing may extend the probationary period for a second year, providing the probationary master teacher is actively pursuing educational qualifications as identified on the DHS form.

(C) Master teacher educational qualifications are met for the initial permit, license issuance, and increases in licensed capacity.

(~~3~~4) **Director as master teacher.** The director may count as a master teacher when meeting the master teacher qualifications per (b) of this Section. Directors counting as master teachers are eligible for probationary periods per (3) of this subsection.

(~~4~~5) **Position specific responsibilities.** Master teachers:

(A) support other teaching personnel in meeting teacher and assistant teacher responsibilities;

(B) are responsible for:

(i) direct care of children;

(ii) planning and implementing the lesson plans;

(iii) classroom arrangement;

(iv) planning and implementing parent communication and family engagement; and

(v) providing input on program development and evaluation; and

(C) are present at the facility during the hours of operation at least 50 percent of operating hours or 30 hours per week, whichever is less.

(~~5~~6) **Position specific professional development.** Master teachers obtain and maintain CPR and first aid certification requirements, per OAC 340:110-3-284(d). Master teachers assuming the position:

(A) on or after November 1, 2016, obtain the certification within three months; or

(B) prior to November 1, 2016, obtain the certification before November 1, 2017.

(c) **Teachers.** The program employs individuals or uses volunteers meeting the position specific requirements in (1) through (3) of this subsection.

(1) **Position specific qualifications.** Teachers:

(A) are at least 18 years of age; and

(B) have at least:

(i) a high school diploma, ~~General Educational Development (~~GED~~)~~, or Licensing approved equivalent; or

(ii) completed 10th grade and are in the process of obtaining a GED for a period not to exceed 12 months from employment.

(2) **Position specific responsibilities.** Teachers:

(A) have the primary responsibility for direct care of children; and

(B) participate in:

(i) lesson plan development and implementation;

(ii) classroom arrangement;

(iii) parent communication and family engagement; and

(iv) program development and evaluation.

(3) **Position specific professional development.** Teachers obtain and maintain CPR and first aid certification requirements, per OAC 340:110-3-284(d). Teachers assuming the position:

(A) on or after November 1, 2016, obtain the certification within three months; or

(B) prior to November 1, 2016, obtain the certification before November 1, 2017.

(d) **Assistant teachers.** The program may employ individuals or use volunteers meeting the position specific requirements in (1) through (4) of this subsection.

(1) **Position specific qualifications.** Assistant teachers:

(A) are at least 16 years of age; and

(B) meet one of ~~these~~the criteria in (i) through (iii). Assistant teachers:

(i) are currently enrolled in high school or an equivalent;

(ii) have at least a high school diploma, GED, or approved equivalent; or

(iii) have completed 10th grade and are in the process of obtaining a GED for a period not to exceed 36 months from employment.

(2) **Position specific responsibilities.** Assistant teachers:

(A) are responsible for direct care of children; and

(B) carry out assigned tasks that may include participation in:

(i) lesson plan development and implementation;

(ii) classroom arrangement;

(iii) parent communication and family engagement; and

(iv) program development and evaluation.

(3) **Position specific professional development.** Assistant teachers obtain and maintain CPR and first aid certification requirements, per OAC 340:110-3-284(d). Assistant teachers assuming the position:

(A) on or after November 1, 2016, obtain the certification within three months; or

(B) prior to November 1, 2016, obtain the certification before November 1, 2017.

(4) **Position specific limitations.** Assistant teachers:

(A) are overseen by an on-site director, master teacher, or teacher:

(i) overseeing two or fewer assistant teachers at one time; and

(ii) providing intervention, when needed; and

(B) not having sole responsibility for a group of children:

(i) for more than three hours per day; and

(ii) during higher risk activities, per OAC 340:110-3-290.

(e) **Substitutes for teaching personnel.** The program may employ individuals or use volunteers or other personnel meeting the position specific requirements in (1) through (3) of this subsection.

(1) **Position specific qualifications.** Substitutes meet the teacher qualifications per (c) of this Section. However, the OPDL certificate is not required until indicated in (3) of this subsection.

(2) **Position specific responsibilities.** Substitutes meet the responsibility requirements for the position(s) they are filling.

(3) **Position specific professional development.** Substitutes meet the general professional development requirements, per OAC 340:110-3-284(d). However, the timeframe for meeting professional development requirements begins when the substitute has worked for the program a total of 80 hours. However:

(A) orientation is required, prior to being left alone with children; and

(B) CPR and first aid certification ~~is~~requirements are met per specific position requirements.

SUBCHAPTER 5. REQUIREMENTS FOR CHILD-PLACING AGENCIES

PART 3. REQUIREMENTS FOR ADOPTION AGENCIES

340:110-5-30. Adoptive family assessment

(a) An adoptive family assessment is completed for each family ~~before a~~prior to child ~~is placed in the home~~ placement. The assessment is documented and available for ~~licensing~~Licensing staff ~~to~~ review, and includes:

(1) ~~one~~an individual face-to-face interview with each parent~~;~~

~~(2) one individual face-to-face interview with each~~, school-age child~~;~~

~~(3) one individual face-to-face interview with any~~, and other adult household ~~member~~members;

(~~4~~2) ~~one~~a joint face-to-face interview with both parents;

(~~5~~3) ~~one~~contact ~~by phone, in person, or by letter~~ with ~~each adult child of~~ the adoptive ~~applicants adults~~ applicants' adult child(ren) no longer living in the home;

(~~6~~4) ~~documentation of a~~home visit ~~to assess the safety and adequacy of~~documentation assessing the home environment safety and adequacy; and

(~~7~~5) three written references~~for the applicants~~.

(b) The ~~written report of the~~ adoptive family assessment written report includes~~:~~

~~(1)~~ information regarding the adoptive parents':

(1) family of origin, significant family experiences, and how ~~the adoptive parents were~~ parented;

(2) ~~the adoptive parents'~~marital history and significant adult relationships;

(3) ~~the adoptive parents'~~ability to handle stress~~individually and jointly~~;

(4) parenting experiences, parenting style, and ~~philosophy of~~ discipline ~~of adoptive parents~~philosophy;

(5) ~~the~~family's adjustment to previous adoptions;

(6) ~~motivation for~~adoption motivation;

(7) ~~attitudes of~~extended family attitudes regarding adoption;

(8) attitudes toward birth parents~~;~~

~~(9)~~ ~~attitudes~~and expectations about openness in adoption and search issues;

(~~10~~9) ~~plans for~~helping children understand adoption plans;

(~~11~~10) ~~expectations for the~~adopted child expectations;

(~~12~~11) family lifestyle, including social, cultural, and religious orientation;

(~~13~~12) educational background~~of adoptive parents~~;

(~~14~~13) ~~a summary of~~health information ~~on the adoptive parents~~summary, including health history, ~~date of~~ medical exam date, and ~~name of physician~~licensed physician's name;

(~~15~~14) ~~adjustment to and acceptance of infertility, if~~infertility adjustment and acceptance, when applicable;

(~~16~~15) financial information, including employment, income, financial obligations, and ~~access to~~ health care services access;

(~~17~~16) ~~verification of~~employment verification, income, adequate insurance, and ~~any~~ other resources, such as subsidized adoption and Temporary Assistance for Needy Families (TANF);

(~~18~~17) ~~plans for~~child care plans;

(~~19~~18) ~~summary of~~family strengths and weaknesses summary;

(~~20~~19) ~~preferences of the adoptive applicants~~preferences regarding the child's age, gender, health, and other characteristics ~~of the child~~ they ~~wish~~request to adopt; and

(~~21~~20) specific recommendations regarding the ~~appropriateness of the family~~family's appropriateness, specific reasons for the recommendation, and ~~characteristics of children~~the child's characteristics, whom the family is approved to adopt.

(c) In addition to the written family assessment, information placed in the adoptive family file includes:

(1) ~~documentation of~~medical exams documentation by a health professional, dated not more than 12 months prior to the completion of the adoptive family assessment, and health histories on all household members verifying ~~that the~~ family members are healthy and free of communicable diseases or physical conditions ~~that would impair~~impairing their ability to care for the adopted child;

(2) ~~verification of~~marriage verification, ~~if~~when applicable, income and expenses, employment, and medical insurance;

(3) ~~the names and addresses of at least~~three references, including names and addresses,~~who have~~ having knowledge of ~~the~~ applicants as a family unit; and

(4) documentation of a criminal and Child Welfare Services (CWS) background check,~~in accordance with~~ per the Oklahoma Adoption Code, ~~[10 O.S. § 7501-1.1 et seq.]~~ Section 7501-1.1 et seq. of Title 10 of the Oklahoma Statutes, and all applicable statutes, along with the agency ~~summary of any~~ findings summary.

(d) The adoptive family assessment is current within 12 months prior to ~~the date of~~ child placement date. Documentation related to the updated family assessment includes:

(1) medical exams by a health professional, dated not more than 12 months prior to the completion of the updated adoptive family assessment, and health histories on all household members verifying ~~that the~~ family members are healthy and free of communicable diseases or physical conditions ~~that would impair~~impairing their ability to care for the adopted child;

(2) criminal and ~~Child Welfare~~CWS background check;

(3) at least three written references from persons who have knowledge of the applicants as a family unit;

(4) financial information including employment, income, and financial obligations; and

(5) ~~access to~~health care services access.

(e) When a home assessment is completed by a licensed private agency in the receiving state, the sending state does not impose any additional requirement to complete the home assessment not required by the receiving state, unless the adoption is finalized in the sending state.

PART 5. REQUIREMENTS FOR FOSTER HOME AGENCIES

340:110-5-59. Number of children

The foster home agency complies with requirements regarding ~~placement of children~~child placement in the foster family home.

(1) No more than five foster children are placed in the home. The total number of children does not exceed six, including biological, adoptive, foster, and other children not in Oklahoma Department of Human Services (DHS) custody.

(2) The number, ages, and needs of foster children placed in the home are in keeping with ~~the capacity and skills of~~ the foster ~~parents~~parents' capacities, skills, and ~~accommodations of the~~ home accommodations.

(3) The foster home agency, with Child Welfare Services approval, may place more than five children in DHS custody in the home.

340:110-5-61.1. Alternative care arrangements

(a) **Informal arrangements~~or babysitting~~.** The foster parent may make informal care arrangements with friends, neighbors, or relatives for occasional ~~care of the~~ child care~~, including before and after school hours, and not to exceed 24 consecutive hours~~ for no more than seven-consecutive calendar days.

(1) The foster parent:

(A) ensures ~~that~~ informal care providers possess the maturity and skills to address the needs of the child in foster care;

(B) secures prior authorization for informal care from the foster home agency~~(agency)~~. Prior authorization may apply to multiple events when the same informal provider is used;

(C) does not utilize a child in foster care to babysit a younger child unless approved by the agency ; ~~and~~

(D) provides the informal provider information for contacting the foster parent and other emergency contacts~~.~~; and

(E) uses reasonable and prudent parent standards when selecting an informal caregiver.

(2) The informal provider who is living:

(A) outside of the home must be at least 18 years of age; or

(B) in the home must be at least 16 years of age and ~~related to the~~a foster ~~parent~~parent's relative.

(3) An informal provider cannot be an individual excluded by Child Welfare Services.

(4) An individual providing care for more than seven-consecutive days must be approved as alternate care.

(b) **Alternate care.** The foster family is encouraged to develop a relationship with another family as an alternate provider who can provide care for the child in foster care in case of ~~family~~ emergencies, ~~family~~ vacations, or ~~when the provider needs~~needed respite care. The agency must approve the alternate care and have documentation ~~that~~ the alternate provider:

(1) is at least 21 years of age;

(2) ~~has~~obtained a criminal history records search within the last 12 months conducted by:

(A) the Oklahoma State Bureau of Investigation (OSBI) that includes a search of Oklahoma Department of Corrections files maintained by ~~the~~ OSBI,~~pursuant to~~ per the Sex Offenders Registration Act for each household member,~~who is~~ 18 years of age or older; and

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

(3) meets the foster home requirements,~~listed in~~ per Oklahoma Administrative Code (OAC) 340:110-5-60;

(4) provides one reference; and

(5) complies with discipline and behavior management requirements,~~in~~ per OAC 340:110-5-62.

[OAR Docket #19-635; filed 6-17-19]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 110. LICENSING SERVICES

[OAR Docket #19-634]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-8 [AMENDED]
340:110-1-9.3 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-46 [AMENDED]
340:110-1-47.2 [AMENDED]
(Reference WF 19-110A)

AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 10 O.S. § 404, the Oklahoma Child Care Facilities Licensing Act.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 28, 2019

COMMENT PERIOD:
January 15, 2019 through February 14, 2019

PUBLIC HEARING:
February 26, 2019

ADOPTION:
February 27, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
November 1, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The proposed amendments to Chapter 110, Subchapter 1, Part 1 and Part 3 amend Child Care Services (CCS) procedures for license issuance and non-compliance with requirements. Licensed child care programs impacted by the proposed amendments include: (1) family child care homes; (2) child care centers; (3) day-camps; (4) drop-in programs; (5) out-of-school time programs; (6) part-day programs; (7) programs for sick children; (8) residential child care facilities; and (9) child-placing agencies.

CONTACT PERSON:
Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. LICENSING SERVICES - CHILD CARE

340:110-1-8. Types of issuance

(a) **Six-month permit.** New child care centers, day camps, drop-ins, out-of-school time, part-day programs, programs for sick children, and family child care homes may be issued a six-month permit. The ~~primary purpose of a~~ six-month permit ~~is to provide an opportunity for the~~provides Oklahoma Department of Human Services (DHS) Child Care Services (CCS) ~~licensing~~Licensing staff an opportunity to evaluate the program's ~~ability to comply~~ compliance with ~~minimum licensing~~Licensing requirements on an ongoing basis, and ~~to provide~~provides a ~~legal~~ basis to contract with DHS ~~to receive~~for child care subsidy, and receive Child and Adult Care Food Program reimbursement. The owner's Licensing compliance history is considered.

(1) Licensing staff may recommend a permit when the program is in compliance with Licensing requirements regarding~~background investigations, required~~:

(A) completed criminal history review results for all required individuals;

(B) number of qualified personnel~~, required~~;

(C) professional development, including current cardio-pulmonary resuscitation (CPR) and first aid certifications~~,~~;

(D) hazards indoors or outdoors~~,~~;

(E) liability insurance coverage~~,~~;

(F) adequate equipment~~,~~;

(G) fencing~~,~~ and playground safety~~,~~;

(H) fire safety~~, or~~; and

(I) other areas affecting children's safety. ~~The owner's previous history of licensing compliance is considered.~~

(2) Licensing staff ~~makes~~conducts a ~~complete monitoring~~full-monitoring visit documenting compliance with Licensing requirements no more than 60-calendar days~~,~~ prior to ~~issuance of the~~ six-month permit issuance.

(b) **Documentation for six-month permit.**

(1) **Child care centers, day camps, drop-ins, out-of-school time, part-day programs, and programs for sick children.** Items required ~~to be~~ on file for ~~issuance of a~~ six-month permit issuance, include:

(A) completed Form 07LC004E, Request for License Child Care Program, and proof of ownership;

(B) ~~verification of~~approved director credential verification and required master teachers, when applicable;

(C) Form 07LC002E, Personnel Summary;

(D) Form 07LC041E, Personnel Information, for each personnel;

(E) Form 07LC057E, Physical Plant, including drawing and calculation;

(F) ~~verification of~~adequate equipment for the recommended capacity;

(G) ~~documentation of~~fire department approval documentation within the previous 12 months;

(H) ~~documentation of~~health approval documentation, within the previous 12 months, when meals are prepared and served; and

(I) ~~monitoring checklist and summary; and~~

~~(J)~~ ~~documentation of~~all required background investigations documentation, per Oklahoma Administrative Code (OAC) 340:110-1-8.1, including completed criminal history review results for all required individuals.

(2) **Family child care homes.** The items required ~~to be~~ on file for ~~issuance of~~ a six-month permit ~~for a family child care home~~issuance include:

(A) completed Form 07LC004E, Request for License Child Care Program, and proof of ownership;

(B) Form 07LC041E, Personnel Information, for primary caregiver and prior to employment for assistants and substitutes;

(C) ~~monitoring checklist and summary;~~

~~(D) documentation of~~fire department approval documentation within the previous 12 months for a large family child care home operating in a mobile home; and

(~~E~~D) ~~documentation of~~all required background investigations documentation per OAC 340:110-1-8.1, including completed criminal history review results for all required individuals.

(c) **Second and subsequent six-month permits.** When ~~additional six-month~~subsequent permits are recommended, the procedures in this subsection are followed.

(1) Assistant licensing coordinator approval is needed for subsequent permits when ~~facilities~~programs are recommended for, or are in the process of, a consent agreement or ~~denial of~~ request for license denial.

(2) Licensing staff consults with the ~~licensing~~Licensing supervisor prior to recommending a second permit.

(3) The ~~licensing~~Licensing supervisor consults with the licensing regional programs manager (RPM) before recommending ~~the issuance of~~ a third permit.

(4) The RPM consults with the statewide licensing coordinator or designee before recommending ~~the issuance of~~ a fourth or subsequent permit.

(5) Licensing staff ~~sends~~provides a letter to the applicant notifying him or her ~~of the recommendation~~ each time a second or subsequent permit is recommended. The reason for the recommendation is clearly stated in the letter, with each ~~area of~~ non-compliance area listed separately.

(6) When ~~the~~a subsequent permit is issued due to numerous, repeated, or serious non-compliance with Licensing requirements, ~~licensing~~Licensing staff ~~visits~~monitors the facility at least monthly, and is accompanied by a witness, when possible. When the non-compliance indicates the program is unable or unwilling to meet ~~licensing~~Licensing requirements, the statewide licensing coordinator or designee is consulted~~to discuss appropriate actions~~.

(7) When Licensing requirements per (a)(1) of this Section are met ~~before the expiration of~~prior to the second or subsequent six-month permit expiration, ~~the issuance of a~~ license issuance may be recommended.

(8) When children ~~have~~were not ~~been~~ in care on a regular basis during the previous ~~year~~12 months, the applicant is ~~asked~~requested to withdraw the request for license, per OAC 340:110-1-6.

(d) **Issuance of license.** A license is issued after ~~DHS investigated~~Licensing evaluates the applicant's activities and standards of care, ~~and determined~~determines the applicant meets all Licensing requirements identified in (a) and (b) of this Section, and ~~demonstrated~~demonstrates substantial compliance with all other Licensing requirements, including entry-level ~~training~~professional development requirements for child care personnel, when required per ~~licensing~~Licensing requirements.

(1) Prior to recommending ~~issuance of a~~ license issuance, ~~licensing~~Licensing staff completes ~~a minimum of~~ at least three monitoring visits, and an equipment inventory, when required per ~~licensing~~Licensing requirements, in child care centers, day camps, drop-ins, out-of-school time and part-day programs, and programs for sick children.

(2) Children in care must be observed during at least one monitoring visit.

(3) A monitoring visit must be ~~made~~conducted within 60-calendar days of the issuance date.

(4) A license is in effect unless ~~it is~~ revoked or the program voluntarily closes.

(e) **Documentation for license issuance.**

(1) **Child care centers, day camps, drop-ins, out-of-school time and part-day programs, and programs for sick children.** In addition to the items ~~listed~~ in (a) through (b)(1) of this Section for ~~issuance of a~~ six-month permit issuance, items required ~~to be~~ on file before ~~a~~ license ~~is issued~~issuance include:

(A) a daily program schedule;

(B) current Form 07LC002E, Personnel Summary;

(C) an outdoor play schedule, when applicable;

(D) Form 07LC006E, Equipment Inventory for Child Care Programs, as required per ~~licensing~~ Licensing requirements;

(E) a statement of completed compliance review, when applicable;

(F) director's references;

(G) a one-week sample menu of program provided meals and snacks~~provided by the program~~;

(H) ~~documentation of~~fire department approval documentation within the previous 24 months;

(I) ~~documentation of~~health approval documentation within the previous 24 months when meals are prepared and served; and

(J) a statement of water test results when not on public water supply.

(i) When the test indicates the ~~level of~~ bacteria, nitrates, or lead level is too high for safe use, the director may sign a statement agreeing to use bottled water for drinking, cooking~~,~~ and, when applicable, children's bathing~~of children~~.

(ii) When there is a high ~~level of~~ bacteria or ~~a high level of~~ lead level, boiled or bottled water must be used for hand washing and dish washing.

(iii) When programs are licensed for 25 or more children, ~~approval from~~ Department of Environmental Quality (DEQ) approval is required, when not on a public water supply system~~; and~~

~~(K) monitoring checklist~~.

(2) **Family child care homes.** In addition to the items ~~listed~~ in (a) through (b)(2) of this Section for ~~issuance of a~~ six-month permit issuance, the items required ~~to be~~

on file before ~~a~~ license ~~is issued to a family child care home~~issuance include:

(A) a one-week sample menu;

(B) references; and

(C) ~~monitoring checklist and summary; and~~

~~(D)~~ a statement of water test results, when not on public water supply.

(i) When the test indicates the ~~level of~~ bacteria, nitrates, or lead level is too high for safe use, the caregiver may sign a statement agreeing to use bottled water for drinking, cooking, and, when applicable, children's bathing~~of children~~.

(ii) When there is a high ~~level of~~ bacteria or ~~a high level of~~ lead level, boiled or bottled water must be used for hand washing and dish washing.

(f) **Evaluation and disposition.**

(1) The ~~licensing~~Licensing supervisor reviews ~~licensing~~Licensing staff's ~~recommendation for~~ case action recommendation before forwarding ~~it~~ to the statewide licensing coordinator or designee.

(2) The statewide licensing coordinator or designee ~~approves~~reviews all ~~recommendations for~~ case ~~actions~~ action recommendations. When a license or permit is approved, owner notification is ~~made to the owner~~ provided.

340:110-1-9.3. Non-compliance with requirements

(a) **~~Documentation of non-compliance~~Non-compliance documentation.** Licensing staff ~~documents~~ clearly and concisely documents areas of non-compliance ~~and the discussion with the operator~~ on the monitoring checklist and summary, including operator discussion.

(1) A plan of correction, including a specific ~~agreed-upon~~agreed-on time period for ~~correction of each~~ non-compliance correction is documented on the monitoring ~~checklist~~summary. When a previous non-compliance was not corrected by the ~~agreed-upon~~agreed-on time period, the non-compliance is documented again with a shorter plan of correction date.

(2) Immediate correction is required when the non-compliance ~~has a direct impact on the~~directly impacts children's health, safety, or well-being~~of one or more children in care~~.

(3) Licensing staff requests the ~~operator sign~~operator's signature on the monitoring summary ~~and explains~~, explaining the ~~operator's~~ signature indicates acknowledgment of recorded information~~recorded~~.

(4) When the operator or individual in charge refuses to sign, the refusal is documented on the ~~report~~ monitoring summary.

(5) The operator is ~~given~~provided a ~~copy of the completed~~ monitoring summary copy.

(6) Timeframes for filing a grievance are provided on the monitoring summary. Refer to grievance procedures, per Oklahoma Administrative Code (OAC) 340:110-1-15.

(b) **Referrals to fire and health officials.** When non-compliance regarding fire or health requirements places children at risk or remains uncorrected, ~~licensing~~Licensing staff requests an inspection by a fire, health, or Oklahoma Department of Environmental Quality official. When there is non-compliance regarding smoke detectors, the child care provider is ~~given~~provided a copy of the Smoke Detector Law, Section 324.11A of Title 74 of the Oklahoma Statutes (74 O.S. § 324.11A). When the non-compliance is not corrected by the third monitoring visit or is ~~frequently~~ repeated, copies of the monitoring summaries are provided with a cover letter to the appropriate fire official~~for enforcement of the law~~.

(c) **Numerous, repeated, and serious non-compliance.**

(1) Numerous non-compliance is monitoring visits with:

(A) five or more ~~items~~Licensing requirement sections documented as non-compliant on the monitoring checklist for a family child care home or large child care home;

(B) six or more ~~items~~Licensing requirement sections documented as non-compliant on the monitoring checklist for a child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children with a licensed capacity of less than 60; or

(C) seven or more ~~items~~Licensing requirement sections for a child care center, day camp, drop-in, out-of-school time, part-day program, or program for sick children with a licensed capacity of 60 or more.

(2) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months. ~~For missing~~Missing immunizations ~~to be~~are considered a ~~repeat~~ repeated non-compliance~~, they must be~~ when regarding the same child.

(3) Serious non-compliance is ~~a~~ non-compliance with ~~licensing~~Licensing requirements exposing children to conditions presenting an imminent risk of harm~~. Imminent risk of harm must be assessed~~ based on the child's age, the amount of time the ~~caregiver~~operator was out of compliance, and the ~~caregiver's~~operator's efforts to mitigate the risk. Serious ~~non-compliances are~~non-compliance is identified through ~~licensing~~ Licensing observations, confirmed complaint investigations, and/or self-reported incidences. ~~Some examples of non-compliance~~Failure to comply with licensing requirements that may be considered as serious ~~are~~non-compliance include:

(A) staff-child ratio;

(B) child supervision~~of children~~;

(C) infant sleep environments and safe-sleep training;

(D) prohibited disciplinary actions;

(E) licensed capacity;

(F) ~~use of passenger restraints~~transportation;

(G) water activities;

(H) pools and other water hazards;

(I) multiple hazards;

(J) weapons;

(K) ~~reporting~~failure to report child abuse or human trafficking;

(L) knowingly permitting access to children by individuals identified as restricted or ~~Child Care~~ Restricted Registry registrants;

(M) failure to obtain background investigations or ~~Child Care~~ Restricted Registry searches;

(N) ~~administering~~ medication ~~to children~~administration;

(O) room temperatures;

(P) heat sources ~~and~~and/or loss of any utility service; and

(Q) ~~compliance file and or posting;~~

~~(R)~~ cardio-pulmonary resuscitation and first aid training~~;~~

~~(S) liability insurance; and~~

~~(T) vehicle liability insurance~~.

(d) **Case management responses to non-compliant facilities.** ~~When~~One or more responses in this subsection are used when there is numerous, repeated, or serious non-compliance~~, one or more of the actions in (1) through (12) is taken~~.

(1) **Technical assistance.** ~~Technical~~Licensing staff offers technical assistance~~is offered along with~~, including referrals to consultants or ~~training~~professional development resources, ~~when necessary, to assist~~ assisting the operator in meeting and maintaining ~~licensing~~Licensing requirements.

(2) **Follow-up phone call to the program.** ~~Follow-up phone~~Phone calls ~~to the program~~ are documented on Form 07LC080E, Licensing Services Supplemental Information~~. A~~ and a copy ~~is~~ provided to the program.

(3) **Non-compliance letters.** A non-compliance letter may be written to the operator. ~~A copy is sent~~ Licensing staff provides a monitoring summary copy with the non-compliance letter to the owner or registered agent, when applicable~~, with a copy of the monitoring summary~~.

(4) **Return monitoring visit.** A return monitoring visit may be ~~made~~conducted when there is numerous, repeated, or serious non-compliance with ~~licensing~~Licensing requirements or when non-compliance places children at imminent risk of harm. When the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return monitoring visit is ~~made~~ conducted at ~~that~~the approximate time.

(5) **Use of witnesses.** ~~Licensing staff may be accompanied by a~~A witness ~~during monitoring visits~~may accompany Licensing staff when the program had numerous, repeated, or serious ~~non-compliances~~non-compliance or ~~denial of~~is considered for request for license denial or license revocation~~of the license is under consideration~~. The witness may be an Oklahoma Department of Human Services (DHS) employee or a representative from the health or fire department, or law enforcement. The witness signs the monitoring summary.

(6) **Increased monitoring visits.** Licensing staff may increase ~~the~~monitoring frequency ~~of monitoring~~ plans when there ~~has been~~were numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** Licensing staff provides the ~~program~~operator with Form 07LC037E, Notice to Comply, and the ~~program~~operator documents the plan of correction. Immediate correction may be required when the non-compliance places ~~the~~children's health, safety, or well-being~~of one or more children in care~~ at risk.

(A) When the plan submitted ~~by the operator~~ is unacceptable to ~~licensing~~Licensing staff, ~~licensing~~ Licensing staff negotiates ~~and documents~~ a revised plan, and requests resubmission within 10-calendar days.

(B) When Form 07LC037E, Notice to Comply, is not submitted within the specified time period, ~~licensing~~Licensing staff contacts the operator and documents the conversation.

(C) When non-compliances continue to place children at risk, ~~licensing~~Licensing staff provides a letter stating the non-compliances and/or continued failure to correct non-compliances may result in ~~revocation of license, denial of the~~ request for license denial, license revocation, filing of an injunction, or Emergency Order.

(8) **Office conference.** Licensing staff may schedule an office conference with the owner and/or operator~~of the facility~~. The ~~licensing~~Licensing supervisor is present at the office conference. The ~~licensing~~ regional programs manager (RPM) is informed of the office conference and may be present, when necessary.

(A) Program status, areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered.

(B) The office conference is documented on Form 07LC080E, Licensing Services Supplemental Information, and is signed by ~~licensing~~Licensing staff, the operator, and witnesses. This documentation includes a list of ~~every individual~~individuals present, ~~the purpose of the~~ conference purpose, and ~~verification of correct documentation regarding~~re-verification of ownership documentation.

(C) Form 07LC037E, Notice to Comply, is completed when one addressing these issues ~~has~~was not ~~been~~previously completed.

(9) **Consent agreement.** Child Care Services (CCS) and the ~~facility~~program owner may enter into a consent agreement ~~whereby,~~when the program owner agrees to specific conditions in lieu of ~~denial of~~ request for license denial or license revocation, per ~~Oklahoma Administrative Code (~~OAC~~)~~ 340:110-1-9.5.

(10) **Revocation or denial.** Licensing staff may recommend the request for license be denied or ~~the~~ license ~~be~~ revoked when numerous, repeated, or serious non-compliance with requirements ~~has been~~was observed and documented or the program failed to adequately protect children, per OAC 340:110-1-10.

(11) **Voluntary cease care.** With CCS State Office approval, the owner is asked to voluntarily cease caring for children. The RPM is notified of every situation involving a request for voluntary cease care.

(12) **Voluntary closure.** With CCS State Office approval, the owner is asked to voluntarily close the facility, per OAC 340:110-1-11.

(e) **Case management responses when children are at risk.** When ~~licensing~~Licensing staff documents non-compliance with requirements or is investigating a complaint that may place ~~the~~children's health, safety, or well-being ~~of children~~ at imminent risk of harm, options to consider ~~during consultation~~ with the operator and licensing supervisor are outlined in this subsection.

(1) The operator is asked to immediately correct the non-compliance, ~~for example~~such as, program personnel will not be present or work alone with children at the facility pending the outcome of an investigation.

(2) With CCS State Office approval, the owner is asked to voluntarily cease child care until the non-compliance is corrected or the investigation is complete.

(3) With CCS State Office approval, the owner is asked to voluntarily close the facility.

(4) When immediate action is needed to protect children, Licensing staff requests an Emergency Order, per OAC 340:110-1-9.4~~, when immediate action is needed to protect children in a child care facility~~.

(5) The owner and CCS agrees to enter into a consent agreement ~~whereby,~~when the program owner agrees to specific conditions in lieu of ~~denial of~~ request for license denial or license revocation, per OAC 340:110-1-9.5.

(6) Licensing staff may recommend the request for license be denied or license be revoked when numerous, repeated, or serious non-compliance with requirements was observed and documented or the program failed to adequately protect children, per OAC 340:110-1-10.

(7) An injunction may be requested when a child care ~~facility~~program is:

(A) unlicensed;

(B) on ~~application~~request for license status;

(C) licensed;

(D) violating an Emergency Order;

(E) operating during an appeal following ~~denial of~~ request for license denial or license revocation and children are at risk; or

(F) violating the notice to cease and desist care following ~~denial of~~ request for license denial or ~~revocation of~~ license revocation.

(f) **Notification to supervisor when children are at risk.** ~~When during~~During a monitoring visit ~~licensing~~when Licensing staff is concerned ~~the~~children's health, safety, or well-being ~~of children~~ is at imminent risk, the ~~licensing~~ Licensing supervisor or CCS State Office staff is contacted immediately~~for an appropriate response~~.

(g) **Alternative method of compliance.** CCS may approve an alternative method of compliance to a minimum ~~licensing~~Licensing requirement. An alternative method of compliance may be authorized when ~~licensing~~Licensing determines the alternative method of compliance offers equal protection of children's health, safety, and well-being~~to children~~, meets the requirement's basic intent ~~of the requirements~~ for the requested alternative compliance~~being requested~~, and does not violate statutory requirements.

(1) An applicant or licensee ~~may submit~~submits a written request with supporting documentation on Form 07LC061E, Alternative Compliance Request, to ~~the licensing~~Licensing staff. A separate alternative method of compliance request is submitted for each requirement ~~that an alternative method of compliance is requested~~identified.

(2) Licensing staff completes Form 07LC105E, Alternative Compliance Referral, and submits all documentation to the statewide licensing coordinator or designee~~for authorization~~.

(3) Approval of an alternative method of compliance does not set a precedent, and is independently evaluated on the merits of each request.

(4) The program's ~~record of~~ compliance record is ~~taken into consideration in~~considered when determining ~~whether to approve the request~~approval.

(5) An alternative method of compliance is not authorized for ~~critical items~~requirements affecting ~~the~~ children's health and safety~~of a child~~, such as exceeding licensed capacity or staff-child ratios, fire safety ~~violations~~, or behavior and guidance~~violations~~.

(6) Form 07LC075E, Notice of Alternative Compliance, stating the nature of the exception, is posted with the license.

PART 3. LICENSING SERVICES - RESIDENTIAL CARE AND AGENCIES

340:110-1-46. Types of issuances

(a) **Six-month permit.** New residential child care programs or child-placing agencies may be ~~granted~~issued a six-month permit. When the program was previously licensed at another location and had a pattern of compliance, the six-month permit may be waived. The owner's Licensing compliance history is considered.

(1) ~~A complete monitoring visit documenting compliance with licensing requirements must be made no longer than 60 calendar days prior to issuance of the six-month permit. The recommendation to issue~~Licensing staff may recommend a permit~~is made after all forms and inspections are completed and~~ when the program is in compliance with ~~all~~Licensing requirements, ~~including~~regarding:

(A) ~~required~~the number of qualified personnel;

(B) completed criminal history review results for all required individuals;

(C) ~~required~~ professional development, including current cardio-pulmonary resuscitation (CPR) and first aid certifications;

(D) hazards indoors and outdoors;

(E) liability insurance coverage;

(F) fire safety; and

(G) other areas affecting children's safety.

(2) Licensing staff conducts a full-monitoring visit documenting compliance with Licensing requirements no

more than 60-calendar days, prior to six-month permit issuance.

(b) **Documentation for six-month permit.**

(~~2~~1) The items required ~~to be~~ on file for ~~issuance of~~ a six-month permit issuance include:

(A) Form 07LC040E, Request for License – Child-Placing Agency and Residential Child Care;

(B) proof of ownership;

(C) ~~list of~~current personnel list;

(D) Form 07LC041E, Personnel Information, for each personnel;

(E) ~~documentation of all~~required background investigations documentation, per Oklahoma Administrative Code (OAC) 340:110-1-8.1, including completed criminal history review results for all required individuals;

(F) State Fire Marshal's approval for residential programs within the previous 12 months;

(G) health department approval for residential programs within the previous 12 months, when meals are prepared and served;

(H) ~~physical plant drawing~~Form 07LC057E, Physical Plant, for residential programs;

(I) completed applicable compliance review questionnaire with supporting documentation; and

(J) ~~monitoring checklists and summary; and~~

~~(K)~~ applicable policy ~~and records check~~per applicable Licensing requirements.

(~~3~~2) During the six-month permit period, ~~a minimum of~~at least three monitoring visits are completed to document ~~all~~Licensing requirements are met, and observe child care or child-placing activity where applicable.

(~~b~~c) **Second and subsequent six-month permits.** When ~~additional six-month~~subsequent permits are recommended, the procedures in ~~(1) through (5) of~~ this subsection are followed.

(1) Programs manager approval is needed for subsequent permits when programs are recommended for, or are in the process of, a consent agreement or request for license denial.

(~~1~~2) Licensing staff consults with the programs manager prior to recommending a second or subsequent permit.

(~~2~~3) Licensing staff ~~sends~~provides a letter to the applicant notifying ~~the applicant of the recommendation~~him or her each time a second or subsequent permit is recommended. The reason for the recommendation is clearly stated in the letter, with each ~~area of~~ non-compliance area listed separately.

(~~3~~4) When the ~~additional six-month~~subsequent permit is due to ~~numerous,~~ repeated~~,~~ or serious non-compliance with Licensing requirements, ~~licensing~~Licensing staff ~~visits~~monitors the program, at least monthly and is accompanied~~, when possible,~~ by a witness, when possible. ~~If at any point~~When the non-compliance indicates the program is unable or unwilling to meet ~~licensing~~Licensing requirements, the programs manager is consulted~~to discuss appropriate actions~~.

(~~4~~5) When requirements are met ~~before the expiration of~~prior to the second or subsequent six-month permit expiration, ~~the issuance of a~~ license issuance may be recommended per (a)(1) of this Section.

(~~5~~6) When children ~~have~~were not ~~been~~ in care on a regular basis or no child-placing activity occurred during the previous ~~year~~12 months, the applicant is ~~asked~~requested to withdraw the request for license, per OAC 340:110-1-45.

(~~c~~d) **License issuance.** When ~~licensing~~Licensing staff determines the program or agency is operating in compliance with the program's or agency's own policy and procedures and in compliance with ~~licensing~~Licensing requirements, a recommendation is made to issue a license. Prior to recommending ~~issuance of a~~ license issuance, ~~licensing~~Licensing staff completes ~~a minimum of~~at least three monitoring visits. A monitoring visit must be ~~made~~conducted within 60-calendar days of the issuance date, and children in care must be observed during at least one monitoring visit, when applicable. A license is in effect unless ~~it is~~ revoked or the program voluntarily closes.

(e) **Documentation for license issuance.** In addition to the items listed in (a) thru (c)(6) of this Section for permit issuance, the items required on file before license issuance include an updated personnel list.

(f) **Evaluation and disposition.**

(1) The programs manager reviews Licensing staff case action recommendations before forwarding to the statewide licensing coordinator or designee.

(2) The statewide licensing coordinator or designee reviews all case action recommendations. When a license or permit is approved, owner notification is provided.

340:110-1-47.2. Non-compliance with requirements

(a) **~~Documentation of non-compliance~~Non-compliance documentation.** Licensing staff ~~documents~~ clearly and concisely ~~areas of~~documents non-compliance ~~and the discussion with the operator~~areas on the monitoring checklist and summary, including operator discussion.

(1) A plan of correction, including ~~an agreed upon~~a specific agreed-on time period for ~~correction of the~~ non-compliance correction is documented on the monitoring ~~checklist~~summary. Each non-compliance or documentation indicates a plan of correction will be submitted by the executive or program director. When a previous non-compliance was not corrected by the ~~agreed upon~~agreed-on time period, the non-compliance is documented again with a shorter plan of correction date.

(2) Immediate correction is required when the non-compliance ~~has a direct impact on the~~directly impacts children's health, safety, or well-being~~of a child(ren) in care~~.

(3) Licensing staff requests the ~~operator sign~~operator's signature on the monitoring summary, explaining the ~~operator's~~ signature indicates acknowledgment of ~~the~~ recorded information.

(4) When the operator or individual in charge refuses to sign, the refusal is documented on the monitoring summary.

(5) The operator is ~~given~~provided a ~~copy of the completed~~ monitoring summary copy.

(6) Timeframes for filing a grievance regarding non-compliance with requirements are provided on the monitoring summary. Refer to grievance procedures, per Oklahoma Administrative Code (OAC) 340:110-1-54.

(b) **Referrals to fire and health officials.** When non-compliance regarding fire or health requirements places children at risk of harm or remains uncorrected, ~~licensing~~Licensing staff requests an inspection by a fire, health, or Oklahoma Department of Environmental Quality official.

(c) **Repeated and serious non-compliance.**

(1) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months.

(2) Serious non-compliance is non-compliance with Licensing requirements exposing children to conditions presenting an imminent risk of harm based on the child's age, the amount of time the program or agency was out of compliance, and the program or agency efforts to mitigate the risk. Serious non-compliance is identified through Licensing observations, and/or confirmed complaint investigations. Failure to comply with licensing requirements that may be considered as serious non-compliance include:

(A) when applicable, staff-child ratio;

(B) child supervision;

(C) infant sleep environments;

(D) prohibited disciplinary actions;

(E) licensed capacity;

(F) transportation;

(G) water activities;

(H) pools and other water hazards;

(I) multiple hazards;

(J) weapons;

(K) failure to report child abuse or human trafficking;

(L) knowingly permitting access to children by individuals identified as restricted or Restricted Registry registrants;

(M) failure to obtain background investigations or Restricted Registry searches;

(N) medication administration;

(O) room temperatures;

(P) heat sources and/or loss of any utility service;

(Q) cardio-pulmonary resuscitation and first aid training; or

(R) required behavior management training.

(~~c~~d) **Case management responses to non-compliant facilities.** ~~The~~One or more responses in this subsection ~~may be~~are used when there is repeated~~, numerous,~~ or serious non-compliance.

(1) **Technical assistance.** ~~Technical~~Licensing staff offers technical assistance ~~is offered along with~~, including referrals to consultants or professional development resources~~, when necessary~~, assisting the operator in meeting and maintaining ~~licensing~~Licensing requirements.

(2) **Follow-up phone call to the program.** Phone calls are documented on Form 07LC080E, Licensing Services Supplemental Information, and a copy ~~is mailed~~provided to the program.

(3) **Non-compliance letter.** A non-compliance letter may be written to the operator. Licensing staff provides a ~~copy of the~~ monitoring ~~checklist and~~summary copy with the non-compliance letter to the governing board or owner, when applicable.

(4) **Return monitoring visit.** A return monitoring visit may be ~~made~~conducted when there is ~~numerous,~~ repeated~~,~~ or serious non-compliance with ~~licensing~~Licensing requirements or when non-compliance places children at imminent risk of harm. When the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return monitoring visit is ~~made~~ conducted at the approximate time.

(5) **Use of witnesses.** ~~Licensing staff may be accompanied by a~~A witness ~~during monitoring visits~~may accompany Licensing staff when the program ~~has~~ had ~~numerous,~~ repeated~~,~~ or serious ~~non-compliances~~non-compliance or ~~when denial of~~considered for request for license denial or ~~revocation of a~~ license revocation~~is being considered~~. The witness may be an Oklahoma Department of Human Services ~~(DHS)~~ employee, a representative from the fire or health department, or law enforcement. The witness signs the monitoring summary~~in the space provided~~.

(6) **Increased monitoring visits.** Licensing staff may increase ~~the frequency of~~ monitoring frequency plans when there ~~has been numerous,~~was repeated~~,~~ or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** Licensing staff provides the ~~program~~operator with Form 07LC037E, Notice to Comply, and the ~~program~~operator documents the plan of correction. Immediate correction may be required when the non-compliance places ~~the~~children's health, safety, or well-being ~~of one or more children in care~~ at risk.

(A) When the plan submitted ~~by the operator~~ is unacceptable~~to licensing staff~~, ~~licensing~~Licensing staff negotiates ~~and documents~~ a revised plan and requests submission within 10-calendar days.

(B) When ~~the operator does not submit~~ Form 07LC037E, Notice to Comply, is not submitted within the specified time period, ~~licensing~~Licensing staff contacts the operator and documents the conversation.

(C) When non-compliances continue to place children at risk, ~~licensing~~Licensing staff provides a letter stating non-compliances and/or continued failure to correct non-compliances may result in ~~revocation of license, denial of~~ request for license denial, license revocation, filing of an injunction, or issuance of an Emergency Order.

(8) **Office conference.** Licensing staff may schedule an office conference with the program owner or operator. The programs manager is present at the office conference. Program status, non-compliance areas,~~of non-compliance~~

and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered. The office conference is documented on Form 07LC080E, Licensing Services Supplemental Information and signed by ~~licensing~~Licensing staff, the operator, and witnesses~~present~~. This documentation includes a list of ~~the~~ individuals present, ~~purpose of the~~ conference purpose, and ~~verification of correct documentation regarding~~re-verification of ownership documentation. Form 07LC037E, Notice to Comply, is completed when one addressing these issues ~~has~~was not ~~been~~previously completed.

(9) **Consent agreement.** Child Care Services (CCS) and the program owner may enter into a consent agreement ~~whereby~~when the program owner agrees to specific conditions in lieu of ~~denial of~~ request for license denial or ~~revocation of a~~ license revocation, per OAC 340:110-1-52.

(10) **Revocation or denial.** Licensing staff may recommend the request for license be denied or ~~the~~ license revoked when ~~numerous,~~ repeated~~,~~ or serious non-compliance with requirements ~~has been~~was observed and documented or the program failed to adequately protect children, per OAC 340:110-1-52.

(11) **Voluntary cease care.** With CCS State Office approval, the owner is asked to voluntarily cease caring for children or child-placing activity. The programs manager is notified of every situation involving a request for voluntary cease care or child-placing activity.

(12) **Voluntary closure.** With CCS State Office approval, the owner is asked to voluntarily close the program.

(~~d~~e) **Case management responses when children are at risk.** When ~~licensing~~Licensing staff documents non-compliance with requirements or is investigating a complaint that children may be at imminent risk of harm, options to consider ~~during consultation~~ with the operator and the programs manager are outlined in this subsection.

(1) The operator is asked to immediately correct the non-compliance; ~~for example~~such as, the personnel will not be present or work alone with children at the program pending the outcome of an investigation.

(2) ~~The operator~~With CCS State Office approval, the owner is asked to voluntarily cease care until the non-compliance is corrected or the investigation is complete.

(3) With CCS State Office approval, the owner is asked to voluntarily close the program.

(4) When immediate action is needed to protect children, Licensing staff requests ~~an issuance of~~ an Emergency Order~~,when immediate action is needed to protect children in a child care program on permit, licensed, on notice of revocation or denial, or operating during an appeal following revocation or denial~~ per OAC 340:110-1.52.

(5) CCS and the owner may enter into a consent agreement ~~whereby~~when the program owner agrees to specific conditions in lieu of ~~denial of~~ request for license denial or license revocation~~,of a license~~ per OAC 340:110-1-52.

(6) Licensing staff may recommend the request for license be denied or license be revoked when ~~numerous,~~ repeated~~,~~ or serious non-compliance with requirements was observed and documented or the program failed to adequately protect children, per OAC 340:110-1-52.

(7) An injunction may be requested when the residential program or child-placing agency is:

(A) unlicensed;

(B) on ~~application~~request for license status;

(C) licensed;

(D) violating an Emergency Order;

(E) operating during an appeal following ~~denial of~~ request for license denial or ~~revocation of a~~ license revocation and children are at risk of harm; or

(F) violating the notice to cease and desist care following ~~denial of~~ request for license denial or ~~revocation of~~ license revocation.

(~~e~~f) **Notification to ~~supervisor~~programs manager when children are at risk.** When ~~licensing staff,~~ during a monitoring visit Licensing staff is concerned the children's health, safety, or well-being ~~of children~~ is at imminent risk, the ~~licensing supervisor~~programs manager or CCS State Office staff is contacted immediately~~for an appropriate response~~.

(~~f~~g) **Alternative method of compliance.** CCS may approve an alternative method of compliance to a minimum ~~licensing~~Licensing requirement. An alternative method of compliance may be authorized when ~~licensing~~Licensing determines the alternative method of compliance offers equal protection of children's health, safety, or well-being~~to children~~, meets the requirement's basic ~~intents of the requirements~~intent for the requested alternative compliance ~~being requested~~, and does not violate statutory requirements.

(1) An applicant or licensee ~~may submit~~submits a written request with supporting documentation on Form 07LC061E, Alternative Compliance Request, to ~~licensing~~Licensing staff. A separate alternative method of compliance request is submitted for each requirement ~~that an alternative method of compliance is requested~~ identified.

(2) Licensing staff completes Form 07LC105E, Alternative Compliance Referral, and submits all documentation to the statewide licensing coordinator or designee~~for authorization~~.

(3) Approval of an alternative method of compliance does not set a precedent, and is independently evaluated on the merits of each request.

(4) The program's ~~record of~~ compliance record is ~~taken into consideration in~~considered when determining ~~whether to approve the request~~approval.

(5) An alternative method of compliance is not authorized for ~~critical items~~requirements affecting ~~the~~children's health and safety~~of a child~~, such as exceeding licensed capacity of a residential program, staff-child ratios, fire safety ~~violations~~, or behavior and guidance~~violations~~.

(6) Form 07LC075E, Notice of Alternative Compliance, stating the nature of the exception, is posted with the license.

[OAR Docket #19-634; filed 6-17-19]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #19-651]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:1-1-4.1. Fees [AMENDED]
AUTHORITY:
Insurance Commissioner; 36 O.S. § 307.1; 59 O.S. § 4003 B
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
January 25, 2019 through March 22, 2019
PUBLIC HEARING:
March 26, 2019
ADOPTION:
March 28, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
365:1-1-4.1(27) is amended to comply with 59 O.S. § 4003 A.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

365:1-1-4.1. Fees

The Oklahoma Insurance Department is required and provided for by the following laws to collect certain fees as follows:

(1) **36 O.S. §311.1.** Provides a late fee required with annual statements filed after the first day of March.

(2) **36 O.S. §321.** Provides for the following fees:

(A) Copies 40¢ per page.

(B) Appointing Commissioner as agent for service of process.

(C) Licensure and reporting requirements for company licensing, mergers and acquisitions.

(D) Life, Accident and Health policy filings.

(E) Amendments to by-laws and articles.

(F) Retaliatory fees.

(3) **36 O.S. §348.1.** Authorizes the Commissioner to collect fees and licenses for the Rate and Form Compliance Division of the Insurance Department.

(4) **36 O.S. §621.** Summons process fees.

(5) **36 O.S. §628.** Life, Accident and Health policy filings retaliatory fee.

(6) **36 O.S. §635.** Initial application fee and annual renewal for Multiple Employer Welfare Arrangements (MEWAs).

(7) **36 O.S. §1115.** Surplus lines taxes.

(8) **36 O.S. §1435.23(A)(4)(c).** Crop hail licensure fees.

(9) **36 O.S. §1435.23 and §1435.29.** Fees and licenses for insurance agents, surplus lines insurance brokers, and limited insurance representatives. Also includes annual fee for agents continuing education providers.

(10) **36 O.S. §1450.** TPA license fee.

(11) **36 O.S. §1464.** Broker license fee

(12) **36 O.S. §1661.** Holding company registration fee.

(13) **36 O.S. §2126.1.** Solicitation and trade fee.

(14) **36 O.S. §2731.** Fraternal license and appointment.

(15) **36 O.S. §3105.** Motor club license and appointment.

(16) **36 O.S. §6124.** Provides for initial fee and renewal fee for prepaid funeral benefits organizations.

(17) **36 O.S. §6130, §1659.** Fines and $5 service charges.

(18) **36 O.S. §6144.** Prepaid Dental Company License

(19) **36 O.S. §6212.** Adjuster's exams, license and manuals fees.

(20) **36 O.S. §6465.** Risk retention group filing fees and purchasing group filing fees.

(21) **36 O.S. §6557, §6559, §6560 and 74 O.S. §1306.2(B).** Provides for application and renewal fees for entities performing utilization review.

(22) **36 O.S. §6604.** Provides for a license fee for service warranties licensure.

(23) **51 O.S. §24A.1 et seq.** - The Open Records Act provides authority to charge reasonable fees to provide information requested by the public. The Act authorizes a "search fee" when records are requested for commercial purposes. The Data Processing Division of the Insurance Department makes certain computer records available upon request. A schedule of the records available and the current fee for each is available upon request from this Division.

(24) **59 O.S. §1305, §1308, §1308.1, §1309, §1314(d) and §1317(a).** Provide for license fees, investigation fees, annual fees for OBA, examination fees, renewal fees and appointment fees for bail bondsmen.

(25) **59 O.S. §858-708.** Gives the Insurance Department authority to collect fees for licensure and examination fees for Real Estate Appraisers.

(26) **68 O.S. §50001.** Fire Marshall tax.

(27) **59 O.S. § 4003.** Pursuant to the provisions of 59 O.S. 4003 A, upon presentation of satisfactory evidence that an applicant for initial licensure or certification is a low-income individual, the Board shall grant a one-time

one-year waiver of any fees associated with such licensure or certification. For purposes of the section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

[OAR Docket #19-651; filed 6-21-19]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #19-652]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 13. Medicare Supplement Insurance Minimum Standards
365:10-5-123. Definitions [AMENDED]
365:10-5-127.1. Benefit standards for 2010 standardized Medicare supplement benefit plan policies or certificates issued for delivery on or after June 1, 2010 [AMENDED]
365:10-5-128.2. Standard Medicare supplement benefit plans for 2010 standardized Medicare supplement benefit plan policies or certificates issued for delivery on or after June 1, 2010 [AMENDED]
365:10-5-128.4. Standard Medicare supplement benefit plans for 2020 standardized Medicare supplement benefit plan policies or certificates issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020 [NEW]
365:10-5-132. Filing and approval of policies and certificates and premium rates [AMENDED]
AUTHORITY:
Insurance Commissioner; 36 O.S. §§ 307.1, 3611.1
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
January 25, 2019 through March 22, 2019
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LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The amendment to 365:10-5-123 adds the word "plan" to the defined term "Medicare Advantage".

The amendment to 365:10-5-127.1 is amended to correct the section referenced in 365: 2510-127.1(b)(5)(D).

The amendment to 365:10-5-128.2 adds language to include Standard Medicare Supplement Benefits Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates to benefit Plan G.

365:10-5-128.4 is a new subsection which addresses Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Polices or Certificates issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020.

The amendment to 365:10-5-132 adds subsection (g) providing that an issuer will not present a Medicare supplement policy rate structure for filing or approval based on attained age rating as a structure or methodology.
CONTACT PERSON:
Sara Worten, Assistant General Counsel, Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-6350

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 13. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

365:10-5-123. Definitions

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

"Applicant" means:

(A) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(B) In the case of a group Medicare supplement policy, the proposed certificateholder.

"Bankruptcy" means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

"Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

"Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

"Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

"Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) A group health plan;

(B) Health insurance coverage;

(C) Part A or Part B of title XVIII of the Social Security Act (Medicare);

(D) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928;

(E) Chapter 55 of Title 10 United States Code (CHAMPUS);

(F) A medical care program of the Indian Health Service or of a tribal organization;

(G) A state health benefits risk pool;

(H) A state health benefits program;

(I) A health plan offered under Chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(J) A public health plan as defined in federal regulation; and

(K) A health benefit plan under section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

"Creditable coverage" shall not include one or more, or any combination of the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof;

(B) Coverage issued as a supplement to liability insurance;

(C) Liability insurance, including general liability insurance and automobile liability insurance;

(D) Workers' compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit-only insurance;

(G) Coverage for on-site medical clinics; and

(H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

"Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(A) Limited scope dental or vision benefits;

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(C) Such other similar, limited benefits as are specified in federal regulations.

"Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

(A) Coverage only for a specified disease or illness; and

(B) Hospital indemnity or other fixed indemnity insurance.

"Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(A) Medicare supplemental health insurance as defined under Section 1822(g)(1) of the Social Security Act;

(B) Coverage supplemental to the coverage provided under Chapter 55 of the Title 10, United States Code; and

(C) Similar supplemental coverage provided to coverage under a group health plan.

"Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).

"Insolvency" means an issuer is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

"Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

"Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

"Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes:

(A) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(B) Medicare medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account; and

(C) Medicare Advantage private fee-for-service plans.

"Medicare Supplement Policy" means a group or individual policy of accident and health insurance or a subscriber contract of a non-profit hospital service and medical indemnity corporation or health maintenance organization, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. "Medicare Supplement Policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under §1833(a)(1)(A) of the Social Security Act.

"Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or **"Pre-Standardized plan"** means a group or individual policy of Medicare supplement insurance issued prior to July 1, 1992.

"1990 Standardized Medicare supplement benefit plan", "1990 Standardized benefit plan" or **"1990 plan"** means a group or individual policy of Medicare supplement insurance issued on or after July 1, 1992 and prior to June 1, 2010 and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

"2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan" or **"2010 plan"**

means a group or individual policy of Medicare supplement insurance issued on or after June 1, 2010.

"Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

365:10-5-127.1. Benefit standards for 2010 standardized Medicare supplement benefit plan policies or certificates issued for delivery on or after June 1, 2010

(a) **Benefit Standards.** The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of O.A.C. 365:10-5-126 and 365:10-5-127.

(b) **General Standards.** The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) **Preexisting conditions.** A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(2) **Sickness and accidents.** A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) **Benefits designed to cover cost sharing amounts under Medicare.** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment factors. Premiums may be modified to correspond with such changes.

(4) **Termination of coverage of a spouse.** No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) **Guaranteed renewable.** Each Medicare supplement policy shall be guaranteed renewable.

(A) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(B) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(C) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under O.A.C. 365:10-5-127.1(b)(5)(E) of this regulation, the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

(i) Provides for continuation of the benefits contained in the group policy; or

(ii) Provides for benefits that otherwise meet the requirements of this Subsection.

(D) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall

(i) Offer the certificateholder the conversion opportunity described in ~~Section 8.1A(5)(c) of this regulation~~ O.A.C. 356:10-7-127.1(b)(5)(C); or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(E) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) **Continuous loss.** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) **Suspension.**

(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

(B) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if

the policyholder or certificateholder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss.

(D) Reinstitution of coverages as described in Subparagraphs (B) and (C):

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(c) **Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M and N.** Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

(6) Hospice Care: Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(d) **Standards for additional benefits.** The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by O.A.C. 365:10-5-128.2.

(1) Medicare Part A Deductible: Coverage for one hundred percent (100%) of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period.

(3) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(4) Medicare Part B Deductible: Coverage for one hundred percent (100%) of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

365:10-5-128.2. Standard Medicare supplement benefit plans for 2010 standardized Medicare supplement benefit plan policies or certificates issued for delivery on or after June 1, 2010

(a) The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of O.A.C. 365:10-5-126 and 365:10-5-127.

(b) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic (core) benefits, as defined in O.A.C. 365:10-5-127.1. If an issuer makes available any of the additional benefits described in O.A.C. 365:10-5-127.1(d), or offers standardized benefit Plans K or L (as described in O.A.C 365:10-5-128.3(f)(8) and (9)), then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic (core) benefits as described above, a policy form or certificate form containing either standardized benefit Plan C (as described in O.A.C. 365:10-5-128.2(f)(3)) or standardized benefit Plan F (as described in O.A.C. 365:10-5-128.2(f)(5)).

(c) No groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall be offered for sale in this state, except as may be permitted in O.A.C. 365:10-5-128.2(g) and in O.A.C. 365:10-5-128.3.

(d) Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans listed in this Subsection and conform to the definitions in O.A.C. 365:10-5-123. Each benefit shall be structured in accordance with the format provided in O.A.C. 365:10-5-127.1(c) and (d); or, in the case of plans K or L, in O.A.C. 365:10-5-128.2(f)(8) or (9) of this regulation and list the benefits in the order shown. For purposes of this Section, "structure, language, and format" means style, arrangement and overall content of a benefit.

(e) In addition to the benefit plan designations required in Subsection (d) of this section, an issuer may use other designations to the extent permitted by law.

(f) Make-up of 2010 Standardized Benefit Plans:

(1) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as defined in O.A.C. 365:10-5-127.1(c).

(2) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as defined in Section of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible as defined in 365:10-5-127.1(d)(1).

(3) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as defined in O.A.C. 365:10-5-127.1(c), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in O.A.C. 365:10-5-127.1(d)(1), (3), (4), and (6), respectively.

(4) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit (as defined in O.A.C. 365:10-5-127.1(c), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in an foreign country as defined in O.A.C. 365:10-5-127.1(d) (1), (3), and (6), respectively.

(5) Standardized Medicare supplement [regular] Plan F shall include only the following: The basic (core) benefit as defined in O.A.C. 365:10-5-127.1(c), plus one hundred percent (100%) of the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in O.A.C. 365:10-5-127.1(d) (1), (3), (4), (5), and (6).

(6) Standardized Medicare supplement Plan F With High Deductible shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual deductible set forth in Subparagraph (b).

(A) The basic (core) benefit as defined in 365:10-5-127.1(c), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 365:10-5-127.1(d) (1), (3), (4), (5), and (6).

(B) The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by regular Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10).

(7) Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as defined in 365:10-5-127.1(c), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 365:10-5-127.1(d) (1), (3), (5), and (6), respectively. <u>Effective January 1, 2020, the standardized benefit plans described in 128.4(b)(4) of this part (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.</u>

(8) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(A) Part A Hospital Coinsurance 61st through 90th days: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(B) Part A Hospital Coinsurance, 91st through 150th days: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(C) Part A Hospitalization After Lifetime Reserve Days are Exhausted: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph (x);

(E) Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph (x);

(F) Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph (x);

(G) Blood: Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subparagraph (x);

(H) Part B Cost Sharing: Except for coverage provided in Subparagraph (ix), coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph (x);

(I) Part B Preventive Services: Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(J) Cost Sharing After Out-of-Pocket Limits: Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(9) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(A) The benefits described in 365:10-5-128.2(f)(8)(A), (B), (C) and (I);

(B) The benefit described in 365:10-5-128.2(f)(8)(D), (E), (F), (G) and (H), but substituting seventy-five percent (75%) for fifty percent (50%); and

(C) The benefit described in 365:10-5-128.2(f)(8)(J), but substituting $2000 for $4000.

(10) Standardized Medicare supplement Plan M shall include only the following: The basic (core) benefit as defined in 365:10-5-127.1(c), plus fifty percent (50%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in 365:10-5-127.1(d)(2), (3) and (6).

(11) Standardized Medicare supplement Plan N shall include only the following: The basic (core) benefit as defined in 365:10-5-127.1(c), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in 365:10-5-127.1(cd)(1), (3) and (6), with copayments in the following amounts:

(A) the lesser of twenty dollars ($20) or the Medicare Part B coinsurance or copayment for each covered health care provider office visit (including visits to medical specialists); and

(B) the lesser of fifty dollars ($50) or the Medicare Part B coinsurance or copayment for each covered emergency room visit, however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(g) New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective.

Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

365:10-5-128.4. Standard Medicare supplement benefit plans for 2020 standardized Medicare supplement benefit plan policies or certificates issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020

(a) **MACRA Requirements.** The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of O.A.C. 365:10-5-126, 365:10-5-127, 365:10-5-127.1, 365:10-5-128 and 365:10-5-128.2.

(b) **Benefit Requirements.** The standards and requirements of O.A.C. 365: 10-5-128.2 shall apply to all Medicare supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(1) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in O.A.C. 365:10-5-128.2(f)(3) but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible.

(2) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in O.A.C. 365:10-5-128.2(f)(5) but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible.

(3) Standardized Medicare supplement benefit plans C, F, and F with High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(4) Standardized Medicare supplement benefit Plan F With High Deductible is redesignated as Plan G With High Deductible and shall provide the benefits contained in O.A.C. 365:10-5-128.2(f)(6) but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible.

(5) The reference to Plans C or F contained in O.A.C 365:10-5-128.2(b) is deemed a reference to Plans D or G for purposes of this section.

(c) **Applicability to Certain Individuals.** O.A.C. 365:10-5-128A applies to only individuals that are newly eligible for Medicare on or after January 1, 2020:

(1) By reason of attaining age 65 on or after January 1, 2020; or

(2) By reason of entitlement to benefits under part A pursuant to Section 226(b) or 226A of the Social Security Act, or who is deemed to be eligible for benefits under Section 226(a) of the Social Security Act on or after January 1, 2020.

(d) **Guaranteed Issue for Eligible Persons.** For purposes of O.A.C. 365:10-5-128A(f), in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F With High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G With High Deductible), respectively, that meet the requirements of O.A.C 365:10-5-128A(b).

(e) **Applicability to Waivered States.** In the case of a State described in Section 1882(p)(6) of the Social Security Act (waivered alternative simplification states) MACRA prohibits the coverage of the Medicare Part B deductible for any Medicare supplement policy sold or issued to an individual that is newly eligible for Medicare on or after January 1, 2020.

(f) **Offer of Redesignated Plans to Individuals Other Than Newly Eligible.** On or after January 1, 2020, the standardized benefit plans described in Subparagraph (b)(4), above may be offered to any individual who was eligible for Medicare prior to January 1, 2020, in addition to the standardized plans described in Section 128.2(f) of this part.

365:10-5-132. Filing and approval of policies and certificates and premium rates

(a) **Policy forms and certificates filing and approval requirements.** An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by the Commissioner.

(b) **Removal of Prescription Drug benefit.** An issuer shall file any rider or amendments to policy and certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

(c) **Premium rates and rating schedule filing and approval requirements.** An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner.

(d) **Additional policy or certificate forms.**

(1) Except as provided in paragraph (2) of this subsection, an issuer shall not file for approval more than

one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the Commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(A) The inclusion of new or innovative benefits;

(B) The addition of either direct response or agent marketing methods;

(C) The addition of either guaranteed issue or underwritten coverage;

(D) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

(e) **Policy forms and certificate forms availability for purchase after Commissioner's approval.**

(1) Except as provided in (A) of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this Part that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(A) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(B) An issuer that discontinues the availability of a policy form or certificate form pursuant to (A) of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under (d)(1) of this section unless the issuer complies with the following requirements:

(A) The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(B) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential which is in the public interest.

(f) **Combination of policy forms or certificate forms experience for purposes of refund or credit calculation.**

(1) Except as provided in (2) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 365:10-5-131.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(g) **Attained age rating.** An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

[OAR Docket #19-652; filed 6-21-19]

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #19-653]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix C. Excess Consent Rate Application [REVOKED]
Appendix C. Excess Consent Rate Application [NEW]
AUTHORITY:
Insurance Commissioner; 36 O.S. § 307.1
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
January 25, 2019 through March 22, 2019
PUBLIC HEARING:
March 26, 2019
ADOPTION:
March 28, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:

The amendment to Appendix C deletes the requirement to submit in duplicate with stamped self-addressed envelope as it is now submitted electronically.

CONTACT PERSON:

Sara Worten, Assistant General Counsel, Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-6350

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

APPENDIX C. EXCESS CONSENT RATE APPLICATION [REVOKED]

APPENDIX C. EXCESS CONSENT RATE APPLICATION [NEW]

TO: Oklahoma Insurance Commissioner
3625 NW 56th Street, Suite 100
Oklahoma City, OK 73112

GENTLEMEN:

Kindly file for _____
(Insurance Company)
the following rates which I understand are in excess of those otherwise applicable.

This percentage increase is understood to apply to the manual premium _____%.

These rates are to apply to the following exposures: _____
_____
_____ and any exposures determined at final audit.

Kind of coverage: _____

Policy Number: _____

Period of Coverage: _____

Policy Limits: _____

Manual Premium at above limits: _____
(estimate if policy is subject to audit)

Proposed premium at above limits is: _____
(estimate if policy is subject to audit)

I am agreeable to paying this premium because (1) _____
_____

Named Insured _____
Signed By _____(2)
Title _____
Date _____(3)

(1) To be completed by insured
(2) Excess form must be signed by insured
(3) Date insured signed form

[OAR Docket #19-653; filed 6-21-19]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. OTHER LICENSEES

[OAR Docket #19-654]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Companies
Part 5. Oklahoma Insurance Holding Company System Regulatory Act
365:25-7-28. Acquisition of control; statement filing (Form A) [AMENDED]
Subchapter 9. Prepaid Funeral Benefits
365:25-9-8. Conversion from trust to insurance funded contracts [AMENDED]
Subchapter 15. Captive Insurance Companies Regulation
365:25-15-1.1. Definitions [NEW]
Subchapter 21. Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities
365:25-21-1. Purpose [AMENDED]
365:25-21-2. Scope [AMENDED]
365:25-21-5. Prohibited uses of senior-specific certifications and professional designations [AMENDED]
Subchapter 25. Oklahoma Employee Injury Benefit Act [REVOKED]
365:25-25-1. Purpose [REVOKED]
365:25-25-2. Scope [REVOKED]
365:25-25-3. Authority [REVOKED]
365:25-25-4. Definitions [REVOKED]
365:25-25-5. Election notification to the Oklahoma Insurance Department [REVOKED]
365:25-25-6. Election fee [REVOKED]
365:25-25-7. Written benefit plan [REVOKED]
365:25-25-8. Employee notice [REVOKED]
365:25-25-9. Funding of Qualified Employer's benefit plan, liability, and other insurable risk [REVOKED]
365:25-25-10. Insuring Qualified Employer's benefit plan, liability, and other insurable risk [REVOKED]
365:25-25-11. Self-Funding Qualified Employer's benefit plan, liability, and other insurable risk [REVOKED]
365:25-25-12. Surety bond and irrevocable letter of credit [REVOKED]
365:25-25-13. Release of security deposit [REVOKED]
365:25-25-14. Oklahoma Option Self-Insured Guaranty Fund [REVOKED]
365:25-25-15. Severability [REVOKED]
Subchapter 30. Professional Employer Organizations [NEW]
365:25-30-1. Purpose [NEW]
365:25-30-2. Scope [NEW]
365:25-30-3. Authority [NEW]
365:25-30-4. Refusal to register [NEW]
AUTHORITY:
Insurance Commissioner; 36 O.S. §§ 307.1, 1435.19, 1641, 6123, 6470.21, Title 36 Article 12; 40 O.S. § 600.4; Title 85A Chapter 2.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
January 25, 2019 through March 22, 2019
PUBLIC HEARING:
March 26, 2019
ADOPTION:
March 28, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The amendment to 365:25-7-28 sets out when the Form A is considered filed with the Oklahoma Insurance Commissioner.
The amendment to 365: 25-9-8 deletes subsection (d)(5) to comport with the amended statute.
The amendment to 365:25-15-1.1 is a new rule adding definitions of "feasibility study" and "business plan".
The amendments to 365:25-21-1, 365: 25-21-2, and 365:25-21-5 include adding Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescriptions plans to the list of products sold in which senior-specific certifications and professional designations cannot be used in the sale, purchase or advice made.
365:25-25-1 through 365:25-25-15 are revoked due to Title 85A O.S. §§ 200-213 being declared unconstitutional by the Oklahoma Supreme Court.
365:25-30-1 through 365:25-30-4 is added to address Professional Employer Organizations.
CONTACT PERSON:
Sara Worten, Assistant General Counsel, Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-6350

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 7. COMPANIES

PART 5. OKLAHOMA INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

365:25-7-28. Acquisition of control; statement filing (Form A)

(a) **Form A.** A person required to file a statement pursuant to Section 1633 of the Act shall furnish the required information on Form A, hereby made a part of this section, as set forth in Appendix A of this Chapter. Such person shall also furnish the required information on Form E, as set forth in Appendix Q of this Chapter.

(b) **Amendments to applications.** The applicant shall promptly advise the Commissioner of any changes in the information so furnished on Form A arising subsequent to the date upon which such information was furnished, but prior to the Commissioner's disposition of the application.

(c) **Identification of section 1633(A) insurers.**

(1) **Domestic insurer name.** If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Section 1633(A) of the Act, the name of the domestic insurer on the cover page should be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) **Section 1633(A).** Where a Section 1633(A) insurer is being acquired, references to "the insurer" contained in Form A (Appendix A of this Chapter) shall refer to both the domestic subsidiary insurer and the person being acquired.

(d) **Hearing on Acquisition of Control.** Section 1633(D)(2) requires a public hearing to be held within

thirty (30) days after the statement required by subsection A of section 1633 is filed. The statement required by subsection A of section 1633 is considered filed with the Insurance Commissioner once the Insurance Commissioner has provided notification to the applicant the statement required by subsection A of section 1633 is complete.

SUBCHAPTER 9. PREPAID FUNERAL BENEFITS

365:25-9-8. Conversion from trust to insurance funded contracts

(a) **Conversion permitted only on forms approved by Oklahoma Insurance Department.** Pursuant to Title 36 Okla. Stat. § 6136.18 existing prepaid funeral contracts that utilize trust funded benefits may be converted to insurance funded prepaid funeral benefits provided the application for such conversion is made on forms approved by the Oklahoma Insurance Department which meet the requirements of the Oklahoma Insurance Code and this subchapter.

(b) **Definitions.** The words and terms used in this section shall be defined according to this title, unless otherwise defined herein or unless the context clearly indicates otherwise.

(1) **"Applicant"** means a permit holder who files an application with the Oklahoma Insurance Department to convert its trust-funded prepaid funeral benefit contract(s) under existing contracts to insurance funded prepaid funeral benefit contract(s).

(2) **"Cash Surrender Value"** means the net amount due the policy owner from the insurer upon surrender of an insurance policy, which will never be less than the amount of the trust funds transferred from the trust to the insurance policy as of transfer date.

(3) **"Death Benefit"** means the total of all contract principal payments collected and accumulated earnings that are transferred at conversion, together with all future gross premiums paid and all accumulated interest earned annually on accumulated interest thereon. Interest must be compounded annually and calculated on gross premiums paid. The post-conversion death benefit can never be less than the pre-conversion death benefit.

(4) **"Insurance policy"** means either:

(A) A standard life or accident insurance policy; or

(B) An individual or group fixed annuity contract relating to an insurance conversion application.

(5) **"Load"** means any commission, allowance, surrender charge or other compensation, expense load, premium expense, administrative charge or expense, policy fees, or other fee or expense paid to an Oklahoma Insurance Department licensed agent associated with or occurring by reason of sale, issuance, lapse, surrender, or redemption of an insurance policy in connection with the conversion of any trust-funded prepaid funeral contract to insurance funded prepaid funeral contract.

(6) **"Post-conversion Administrator"** means the administrator, who shall be the funeral home requesting conversion or an administrator selected by the funeral home requesting conversion, of the prepaid funeral benefits contracts who holds and administers the prepaid funeral contracts after conversion and assumes responsibility for receiving the proceeds of the insurance policy upon maturity of a contract and processing payment to the funeral provider after verifying that the funeral service and merchandise under the prepaid funeral contract have been delivered.

(7) **"Required reserves"** means the reserve liabilities for all outstanding insurance contracts valued or calculated pursuant to actuarial standards and statutory accounting standards not inconsistent with the Oklahoma Insurance Code.

(c) **Applications.** When applying for permission to convert trust funded benefits under existing prepaid funeral contracts to insurance funded benefits, an applicant shall:

(1) Hold a valid permit issued by the Oklahoma Insurance Department;

(2) Be in good standing with the Oklahoma Insurance Department;

(3) Submit a completed conversion application to the Oklahoma Insurance Department; and

(4) Not have been found to be in violation of any applicable laws or regulations relating to the Oklahoma Insurance Code or not have any other deficiencies of any significance that have not been remedied or corrected to the satisfaction of the Oklahoma Insurance Department.

(d) **Included in application.** Each application for conversion must include:

(1) A copy of a letter to the applicant from an insurer authorized to do business in Oklahoma evidencing the policy form number and setting out the insurer's agreement to issue insurance policies to convert the prepaid funeral contracts from trust-funded benefits to insurance funded benefits; and

(2) A copy of the written commitment to the Commissioner containing the agreement between or among the insurer, the applicant, and the post-conversion administrator regarding the transfer, receipt, and the application of the trust funds upon conversion, which commitment must require that a copy of each insurance policy issued be furnished to the owner of the insurance policy and that a copy be made available to the respective prepaid funeral contract purchasers upon request, in the event they are not the owners of the policies;

(3) A pre-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of a date within thirty (30) days of the date of the application), as well as aggregated totals for each category of information, if appropriate:

(A) Individual prepaid funeral benefits contract purchaser's name;

(B) Individual prepaid funeral benefits contract owner's name if other than the purchaser;

(C) Date of execution of pre-converted prepaid funeral contract;

(D) Face amount of the contract;

(E) Amount paid in and the unpaid balance;

(F) Accumulated earnings;

(G) Amount due the prepaid funeral contract purchaser upon cancellation and the amount due the applicant upon death of the prepaid funeral contract owner, assuming death or cancellation were to occur on or about the date of the application;

(H) Amount retained by the applicant under the Okla. Stat. tit. 36, § 6125; and

(I) Whether the pre-converted contract is or was a contract pursuant to Okla. Stat. tit. 36, § 6125(B)(1) or § 6125 (B)(2).

(4) A post-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of the same date as the pre-conversion summary), as well as aggregated totals for each category of information, if appropriate:

(A) Name of insured or annuitant;

(B) Owner of insurance policy or annuity if other than the insured or annuitant;

(C) Original prepaid funeral contract amount;

(D) Amount paid in and the unpaid balance;

(E) Amount applied to the purchase of the insurance policy;

(F) Initial cash surrender value and initial death benefit under the insurance policy; and

(G) Amount retained by the applicant under the Okla. Stat. tit. 36, § 6125

~~(5) A copy of the proposed negative response notification letter, as required in Okla. Stat. tit. 36, § 6136.18(C)(2), to the prepaid funeral contract purchasers from the applicant containing a statement explaining the purchaser has sixty (60) days to file a written request with the Department to have the contract converted back to trust fund benefits;~~

(5~~6~~) An actuarial certification certifying that the reserves to be held by the insurance company with respect to the conversion will be adequate to pay claims as they become due (dated no more than six (6) months prior to the date of the application);

(6~~7~~) A copy of the form of assignment, if any, to be used in assigning insurance policy rights or proceeds to the post-conversion administrator.

(e) **Standards for approval of application.** An application for conversion will be approved by the Commissioner if, in the Commissioner's opinion, the rights and interests of the prepaid funeral contract purchasers under the insurance funded contract arrangement will be safeguarded to at least the same degree as provided under the trust-funded benefits contract. An application may be approved without the necessity of a hearing.

(1) In order for insurance funded contracts under an application for conversion to be considered to safeguard the rights and interests of the prepaid funeral contract purchasers to at least the same degree as the trust-funded benefits, insurance benefits must comply with this subsection.

(A) The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal by the applicant pursuant to the Insurance Code under the trust-funded prepaid funeral contract proposed for conversion, plus all net earnings accumulated with respect thereto, as of the transfer date. No load may be deducted from the trust funds transferred pursuant to the conversion application.

(B) No provision in the insurance policy may allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation or condition other than requiring submission of proof of death or surrender of the policy at the time the prepaid funeral contract is funded, matures, or cancels, as the case may be.

(C) The insurance company must demonstrate that, in the previous seven years, the average death benefit growth under the same or substantially similar insurance policies issued by the insurance company to fund prepaid funeral contract has been at least 3.0% of accumulated premiums based on gross premiums paid. If the insurance company cannot so demonstrate, then the insurance policy must provide for guaranteed growth of the death benefit of no less than 2.0% annum compounded annually on gross premiums paid beginning in the first year of the policy.

(D) The post-conversion administrator is responsible for payment of all death and cancellation claims pursuant to the terms of the prepaid funeral benefits contract and in accordance with Okla. Stat. tit. 36, § 6125.

(E) Any insurance policy issued on any individual must be for an amount not less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental insurance policy issued to cover the unfunded portion of the contract must have a face amount that is at least as great as the unfunded principal balance. No credit or reduction may be made for interest earned or accrued on the paid-in principal balance.

(F) The insurance policy must provide each prepaid funeral contract purchaser with a cash surrender value or cancellation benefit that is at least the same the amount of the trust funds transferred from the trust to the insurance policy as of transfer date and for the duration of the prepaid funeral contract less any amount due to the purchaser from the funeral home, if any, as set forth in Okla. Stat. tit. 36, § 6125. If a prepaid funeral contract is canceled at the initiative of the purchaser after the 60-day initial conversion cancellation period or the purchaser requests withdrawal of monies prior to death and in accordance with Okla. Stat. tit. 36, § 6125, the Funeral Home/Applicant or post conversion administrator must remit at least the applicable cancellation benefit directly to the purchaser in accordance with the provision of the prepaid funeral contract and in accordance with Okla. Stat. tit. 36, § 6125(B)(1).

(G) The post-conversion administrator must submit to the department, within 90 days of the date of transfer of the trust funds as authorized by the Commissioner's order, a post-conversion summary of the individual prepaid funeral contracts as of the conversion date, which must include, at a minimum, the following information, as well as aggregated totals for each category of information, if appropriate:

(i) Insured's name;

(ii) Insured's policy number;

(iii) The original prepaid funeral contract amount;

(iv) Amount paid in;

(v) Unpaid balance of the prepaid funeral contract;

(vi) Amount retained by the applicant under Okla. Stat. tit. 36, § 6125;

(vii) Amount applied to the purchase of the insurance policy; and

(viii) Initial cash surrender value and initial death benefit under the insurance policy.

(H) The applicant shall relinquish to the post-conversion administrator the individual prepaid funeral contract ledgers reflecting the amount paid and the amount left owing on the prepaid funeral contract, if any. The post-conversion administrator shall be responsible for maintaining such ledgers to reflect the principal balance of the converted contract as well as any outstanding balances.

(I) Within 90 days of the execution of the conversion order, the post-conversion administrator must submit a notarized statement to the department attesting that the insurance policies have been issued and funded on behalf of the contract purchasers listed in the original post-conversion summary included in the conversion application and that all notices required under subsection (c)(3)(I) of this section have been given. Within 120 days of the execution of the conversion order, all requirements under this section for completion of a conversion must be met, if they are not, the conversion order is void without further action of the department.

(J) If for any reason the Commissioner deems it necessary before final approval of the conversion order, the Commissioner may order a financial examination of the trust. The cost of said financial examination shall be paid by the applicant and conducted in accordance with Section 6129.1 of Title 36 of the Oklahoma Statutes, as the Commissioner deems warranted. The applicant shall demonstrate compliance with the Oklahoma Insurance Code, and if the applicant fails to do so, the Commissioner may request an examination of the trust as set forth in Section 6129.1 of Title 36 of the Oklahoma Statutes.

(K) The Commissioner may hold a hearing on an application. Hearings shall be conducted pursuant to the Oklahoma Insurance Code, Insurance Department rules and regulations, and the laws of the State of Oklahoma. The applicant shall have the burden to demonstrate by a preponderance of the evidence the existence of all factors necessary to entitle the applicant to convert to insurance funded benefits from trust-funded benefits.

SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION

365:25-15-1.1. Definitions

The following words and terms, when used in this subchapter and the Oklahoma Captive Insurance Company Act, shall have the following meaning, unless the context clearly indicates otherwise:

"Business plan" means the business activity of the company designed to accomplish its stated purpose. At a minimum, it must include the following:

(A) identity of the ownership and management;

(B) the type and expected volume of business to be written;

(C) details of any reinsurance agreements to be entered into;

(D) details of any management services or tax allocation agreements; and

(E) financial projections as required per subsection (a)(1)(G) above.

"Feasibility study" means an analysis of the owner/insured's risk profile and financial condition. The analysis must include and consider the following issues, but is not limited to:

(A) a detailed analysis as to how the captive will effect risk management and loss control;

(B) risks to be insured;

(C) recommendations and projections by a qualified independent actuary recommended premiums, losses, expenses and retentions;

(D) tax projections;

(E) domicile options that address the impact on operating costs and tax issues;

(F) comparison of a captive program with other viable risk financing alternatives;

(G) five-year pro forma financial statements and projections, analysis of the financial impact of establishing a captive, of any form; and

(H) identification of management procedures, underwriting procedures, managerial oversight methods, investment policies, and reinsurance agreements.

SUBCHAPTER 21. REGULATION ON THE USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES

365:25-21-1. Purpose

The purpose of this regulation is to set forth standards to protect consumers from misleading and fraudulent marketing

practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, ~~a~~ life insurance, ~~or~~ annuity products or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans.

365:25-21-2. Scope

This regulation shall apply to any solicitation, sale or purchase of, or advice made in connection with, ~~a~~ life insurance,~~or~~ annuity ~~product~~products, or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans by an insurance producer.

365:25-21-5. Prohibited uses of senior-specific certifications and professional designations

(a) **Unfair and deceptive acts or practices.**

(1) It is an unfair and deceptive act or practice in the business of insurance within the meaning of Article 12 of Title 36 of the laws of this State for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling ~~a~~ life insurance,~~or~~ annuity ~~product~~ products, or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance, or annuity product, or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans.

(2) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

(A) Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

(B) Use of a nonexistent or self-conferred certification or professional designation;

(C) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

(D) Use of a certification or professional designation that was obtained from a certifying or designating organization that:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(b) **Rebuttable presumption.** There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection (a)(2)(D) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(1) The American National Standards Institute (ANSI);

(2) The National Commission for Certifying Agencies; or

(3) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(c) **Words or acronyms.** In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

(1) Use of one or more words such as senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

(d) **Organizations licensed by or registered by a State of federal services regulatory agency.**

(1) For purposes of this regulation, a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(A) Indicates seniority or standing within the organization; or

(B) Specifies an individual's area of specialization within the organization.

(2) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

SUBCHAPTER 25. OKLAHOMA EMPLOYEE INJURY BENEFIT ACT [REVOKED]

365:25-25-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to set forth the regulations and procedures for employers to secure compensation for their covered employees for work-related injuries under the Oklahoma Employee Injury Benefit Act, 85A O.S. §§ 200 et seq.~~

365:25-25-2. Scope [REVOKED]

~~This Subchapter shall apply to all Oklahoma employers who voluntarily elect to be exempt from the Administrative Workers' Compensation Act and become a Qualified Employer under the Oklahoma Employee Injury Benefit Act. Employers seeking to self-insure under the Administrative Workers' Compensation Act are subject to the rules of the Oklahoma Workers' Compensation Commission in Title 810, Chapter 5 of the Oklahoma Administrative Code.~~

365:25-25-3. Authority [REVOKED]

~~This Subchapter is promulgated under the authority granted to the Insurance Commissioner under the Administrative Workers' Compensation Act, 85A O.S. §§ 1 et seq., and the Oklahoma Employee Injury Benefit Act, 85A O.S. §§ 200 et seq.~~

365:25-25-4. Definitions [REVOKED]

~~Unless otherwise specified in this Subchapter, defined terms in the Administrative Workers' Compensation Act shall have the same meaning herein. The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~**"Benefit plan"** means a plan established by a Qualified Employer under the requirements of 85A O.S. § 203.~~

~~**"Commission"** means the Workers' Compensation Commission under the Administrative Workers' Compensation Act.~~

~~**"Commissioner"** means the Insurance Commissioner of the State of Oklahoma.~~

~~**"Covered employee"** means the employee whose employment with a Qualified Employer is principally located within the state.~~

~~**"Employer,"** except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, limited liability company, corporation, department, instrumentality or institution of this state and divisions thereof and other political subdivisions of this state and public trusts employing a person included within the term employee as defined herein.~~

~~**"Financial Statement"** means an employer's audited financial statement or financial statement signed by two (2) company executives that includes a balance sheet and income statement.~~

~~**"Occupational Injury"** means an injury, including death, or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment.~~

~~**"Qualified Employer"** means an employer otherwise subject to the Administrative Workers' Compensation Act that voluntarily elects to be exempt from such act by satisfying the requirements under the Oklahoma Employee Injury Benefit Act.~~

~~**"Statutory Limits"** means an insurer's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.~~

365:25-25-5. Election notification to the Oklahoma Insurance Department [REVOKED]

~~(a) Each employer that elects to become a Qualified Employer shall electronically complete the Qualified Employer Election Form and provide all information requested at least sixty (60) days prior to the desired effective date of its election to become a Qualified Employer.~~

~~(b) If a Qualified Employer elects to renew its status as a Qualified Employer after the expiration of its initial one (1) year term as a Qualified Employer, or for any renewal thereafter, the Qualified Employer shall electronically complete the Qualified Employer Election Form and provide all information requested at least sixty (60) days prior to the expiration as a Qualified Employer.~~

~~(c) The Qualified Employer Election Form shall include complete answers to all questions therein and shall include satisfactory proof of the employer's ability to secure compensation for its covered employees for work-related injuries prior to being confirmed as a Qualified Employer by the Oklahoma Insurance Department.~~

~~(d) Upon written confirmation by the Oklahoma Insurance Department that the employer has satisfied all the requirements to be recognized as a Qualified Employer, the employer may proceed with its written benefit plan and notification of employees as provided in 365:25-25-8.~~

~~(e) Upon request by the Oklahoma Insurance Department, a Qualified Employer shall submit documentation to affirm its continued compliance with the Oklahoma Employee Injury Benefit Act and this Subchapter. In addition, a Qualified Employer shall notify the Oklahoma Insurance Department of any change in information required to be submitted to the Commissioner under this Subchapter within fourteen (14) days after the change. Upon a finding that a Qualified Employer is no longer in compliance with the Oklahoma Employee Injury Benefit Act or this Subchapter, the Oklahoma Insurance Department may withdraw its confirmation of the employer as a Qualified Employer.~~

365:25-25-6. Election fee [REVOKED]

~~A nonrefundable fee of One Thousand Five Hundred Dollars ($1,500.00) is payable, via electronic funds transfer, upon filing an employer's initial Qualified Employer Election Form and upon filing a Qualified Employer Election Form for any annual renewal thereafter.~~

365:25-25-7. Written benefit plan [REVOKED]

~~In addition to the Qualified Employer Election Form, the employer shall provide the following documents and information to the Oklahoma Insurance Department:~~

~~(1) A copy of the employer's written benefit plan;~~

~~(2) A written statement explaining the procedure used to notify the employer's covered employees that the employer has elected to become a Qualified Employer;~~

~~(3) The name, title, address, and telephone number for a covered employee to contact for injury benefit claims administration, and whether that party is in-house, a third-party administrator, or an insurance carrier; and~~

~~(4) A copy of the employer's Employee Notice.~~

365:25-25-8. Employee notice [REVOKED]

~~No employer shall act as a Qualified Employer in this state until such employer provides written notification to its covered employees in substantially the same form as the "Notice To Employees Concerning Qualified Employer" notice as set forth in Appendix Z of this Chapter. Such notice shall be provided to all employees upon the employer's confirmation as a Qualified Employer by the Oklahoma Insurance Department. Subsequent newly hired employees shall receive the written notification upon the employees' date of hire. Such notice shall be necessarily posted at conspicuous locations at the Qualified Employer's places of business to provide reasonable notice to all employees that the employer is a Qualified Employer, that the employer does not carry workers' compensation insurance coverage, and that the employer's workers' compensation coverage has been terminated or cancelled.~~

365:25-25-9. Funding of Qualified Employer's benefit plan, liability, and other insurable risk [REVOKED]

~~A Qualified Employer may self fund or insure benefits payable under the benefit plan (which are in the nature of workers' compensation), the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer.~~

365:25-25-10. Insuring Qualified Employer's benefit plan, liability, and other insurable risk [REVOKED]

~~(a) A Qualified Employer that elects to insure benefits payable under the benefit plan, the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer, shall obtain insurance coverage in an amount equal to the compensation obligation with an admitted insurance carrier, including property and casualty insurance carrier; life, health and accident insurance carrier; or surplus lines insurer; provided, however, that such admitted or surplus lines insurer has an AM Best Rating of B+ or better. The Oklahoma Insurance Department does not approve insurance rates for any type of coverage under the Oklahoma Employee Injury Benefit Act.~~

~~(b) Such insurance coverage pertains to Oklahoma covered employees only. Employers with employees working in state(s) other than Oklahoma shall arrange separate insurance coverage in compliance with that state(s)'s laws.~~

365:25-25-11. Self- Funding Qualified Employer's benefit plan, liability, and other insurable risk [REVOKED]

~~A Qualified Employer that elects to self-fund the benefits payable under the benefit plan, the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer, shall secure compensation to covered employees by furnishing satisfactory proof to the Oklahoma Insurance Department of the employer's financial ability to pay the compensation and must meet the following requirements:~~

~~(1) Provide the dollar amount and documentation to support its average of the yearly claims for the last three (3) calendar or fiscal years. Such documentation shall include the total incurred claims cost for the prior three (3) calendar or fiscal years and an attachment of the loss runs that include the total incurred amounts (all paid and reserved medical and indemnity) for Oklahoma occupational injury claims incurred during a three (3) calendar or fiscal year period ending not more than one hundred twenty (120) days prior to the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer;~~

~~(2) Attach employer's most recent financial statement which shall include a balance sheet and income statement;~~

~~(3) Furnish satisfactory proof to the Oklahoma Insurance Department of the employer's financial ability to pay the compensation as follows:~~

~~(A) An employer must have been continuously engaged in business for not less than three (3) years immediately preceding the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer, have at least one hundred (100) employees (all states included) and at least One Million Dollars ($1,000,000.00) in net assets, and must secure a surety bond payable to the Oklahoma Insurance Department or an irrevocable letter of credit, in an amount determined by the Commissioner equal to at least the greater of: (1) One Hundred Thousand Dollars ($100,000.00); or (2) the employer's average of its yearly incurred occupational injury claims for the last three (3) calendar or fiscal years ending not more than one hundred twenty (120) days prior to the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer; or (3) if the employer is renewing its status as a Qualified Employer, the amount of outstanding occupational injury claims reserves for the employer, as determined by an approved third-party administrator or benefits administrator; or~~

~~(B) An employer provides proof of excess coverage with such terms and conditions as is commensurate with the employer's ability to pay the benefits required by the provisions of the Oklahoma Employee Injury Benefit Act, as determined by the Oklahoma~~

~~Insurance Department. Such excess insurance must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The self insured retention must be approved by the Oklahoma Insurance Department, and the excess carrier's limits of liability must be statutory. An amount less than Statutory Limits must be approved in advance by the Oklahoma Insurance Department. Aggregate excess insurance may be required by the Oklahoma Insurance Department if necessary; or~~

~~(C) An employer that does not satisfy the requirements of Subsection 3(A) of this Section, may petition the Oklahoma Insurance Department for a waiver of the requirements. The Oklahoma Insurance Department may waive some or all of the requirements for good cause, subject to such security deposit and/or excess insurance requirements in an amount, determined by the Oklahoma Insurance Department, to be commensurate with the ability of the employer to pay the benefits required by the provisions of the Oklahoma Employee Injury Benefit Act.~~

365:25-25-12. Surety bond and irrevocable letter of credit [REVOKED]

~~Surety bonds must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better, and on a form prescribed by the Oklahoma Insurance Department. Irrevocable letters of credit shall contain such terms as may be prescribed by the Oklahoma Insurance Department, include an automatic renewal clause, and cannot be non-renewed without at least sixty (60) days' prior written notice to the Oklahoma Insurance Department, and shall be issued for the benefit of the Oklahoma Insurance Department by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The financial institution must be approved in advance by the Oklahoma Insurance Department. The Oklahoma Insurance Department may make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the employer to pay compensation liabilities, or the cancellation of the letter of credit without an adequate replacement.~~

365:25-25-13. Release of security deposit [REVOKED]

~~(a) A security deposit posted with the Oklahoma Insurance Department as required by 365:25-25-11 must remain in place, at its existing amount, for two (2) years after a Qualified Employer ceases to self-insure its benefit plan. The Oklahoma Insurance Department may review the adequacy or excess of the security deposit in advance of the cessation date and require modifications to the security deposit amount as necessary.~~

~~(b) A security deposit may be reduced at the Oklahoma Insurance Department's discretion after the two (2) year waiting period upon application by the employer and submission of current financial statements and occupational injury loss runs.~~

~~(c) A security deposit may be released at the Oklahoma Insurance Department's discretion upon application by the employer and submission of current financial statements and a signed and notarized affidavit, from a duly authorized officer of the employer, affirming that all occupational injury claims incurred as a Qualified Employer have been permanently closed, and the statute of repose for reopening the claims has passed.~~

~~(d) The security deposit shall be released in full by the Oklahoma Insurance Department within a reasonable period following receipt of proof of an assumption agreement or equivalent, from a licensed insurance carrier, whereby the claims liability of the employer as a Qualified Employer is transferred to and assumed by the insurance company. The assumption agreement or equivalent may be entered into before expiration of the two (2) year period provided in Subsection (A) of this Section.~~

365:25-25-14. Oklahoma Option Self-Insured Guaranty Fund [REVOKED]

~~Upon declaration by the Insurance Commissioner that a self insurer has become an impaired insurer, the Insurance Commissioner shall petition the Commission for its approval that the Insurance Commissioner release the Qualified Employer's required security from the Office of State Treasurer and shall advise the Oklahoma Property and Casualty Insurance Guaranty Association of the impairment.~~

365:25-25-15. Severability [REVOKED]

~~If any provisions of this Subchapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of this Subchapter which shall be given effect without the invalid provision or application, and to that end the provisions of the Subchapter are severable.~~

SUBCHAPTER 30. PROFESSIONAL EMPLOYER ORGANIZATIONS

365:25-30-1. Purpose

The purpose of this Subchapter is to set forth the regulations and procedures relating to the registration and oversight of professional employer organizations under the Oklahoma Professional Employer Organization Recognition and Registration Act, 40 O.S. §§ 600.1-600.9.

365:25-30-2. Scope

This Subchapter shall apply to all professional employer organizations which must be registered pursuant to 40 O.S. § 600.4.

365:25-30-3. Authority

This Subchapter is promulgated under the authority granted to the Insurance Commissioner in 40 O.S. § 600.4(J).

365:25-30-4. Refusal to register

The Insurance Commissioner may refuse to register any person, suspend or revoke the registration of any professional

employer organization in accordance with 40 O.S. § 600.9. In addition to or in lieu of any applicable denial, suspension or revocation, the applicant or professional employer organization may be subject to an administrative fine of not less than One-Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each violation of the Oklahoma Professional Employer Organization Recognition and Registration Act.

[OAR Docket #19-654; filed 6-21-19]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 40. HEALTH MAINTENANCE ORGANIZATIONS (HMO)

[OAR Docket #19-655]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:40-1-3. Medicaid HMOs [AMENDED]
AUTHORITY:
Insurance Commissioner; 36 O.S. §§ 307.1, 6903
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
January 25, 2019 through March 22, 2019
PUBLIC HEARING:
March 26, 2019
ADOPTION:
March 28, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 15, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
365:40-1-3 is amended to delete 365:40-3-2 from the rule in order to comply with 36 O.S. § 6903.1, which now requires compliance with 36 O.S. § 6913.
CONTACT PERSON:
Sara Worten, Assistant General Counsel, Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-6350

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

365:40-1-3. Medicaid HMOs

Domestic health maintenance organizations that contract with the Oklahoma Health Care Authority to provide basic health care services to Medicaid recipients and do not provide basic health care services to any other group of persons shall be exempt from compliance with ~~O.A.C. 365:40-3-2 and~~ 365:40-5-44 of this Chapter.

[OAR Docket #19-655; filed 6-21-19]

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

[OAR Docket #19-663]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
460:20-1-7 [AMENDED]
460:20-1-9 [AMENDED]
Subchapter 11. State Processes for Designating Areas Unsuitable for Surface Mining Operations
460:20-11-4 [AMENDED]
Subchapter 15. Requirements for Permits and Permit Processing
460:20-15-10.1 [AMENDED]
Subchapter 17. Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights
460:20-17-5 [AMENDED]
Subchapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plans
460:20-27-14 [AMENDED]
Subchapter 29. Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources
460:20-29-10 [AMENDED]
460:20-29-11 [AMENDED]
Subchapter 31. Underground Mining Permit Applications: Minimum Requirements for Reclamation
460:20-31-9 [AMENDED]
Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards
460:20-43-37 [AMENDED]
Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities
460:20-45-5 [AMENDED]
Subchapter 63. Individual Civil Penalties
460:20-63-5 [AMENDED]
AUTHORITY:
Title 45 O.S. Section 1.5 et seq.; Oklahoma Mining Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 2, 2018
COMMENT PERIOD:
December 4, 2018 through January 3, 2019
PUBLIC HEARING:
January 3, 2019, in Oklahoma City and Wagoner, Oklahoma
ADOPTION
March 21, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 14, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The gist of this amendment is to ensure that Chapter 20 complies with federal law. In 2014, a state amendment was promulgated and in 2015 this amendment was filed with ODM's federal oversight agency OSMRE, as a program amendment. OSMRE reviewed the filing, made changes, and in January 2018, the program amendment became effective. A line by line comparison was made between the approved program amendment and Chapter 20, of the OAC, 2016 Edition. This 2019 state amendment is comprised of any discrepancies found between the 2016 OAC and OSMRE's effective changes. Federal law requires that state law be no less effective than its federal counterpart, therefore Chapter 20, must be amended to reflect the approved federal changes. Other than a few punctuation and grammatical corrections, most of the federal changes pertain to references to or in another section. In 460:20-17-5 (d) (1) a reference section, 460:20-15-6.8, was added. In 460:20-27-14 (e) an incorrect reference to 460:20-43-20 was corrected to 460:20-43-29. A Subsection (e) was added to 460:20-15-10.1 allowing any applicant or operator still aggrieved by a hearing decision to request a judicial review. In the heading of Subchapter 45, the word temporary has been eliminated and in Section 460:20-45-5 (c), the word temporary has been corrected to the permanent.
CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 4845 South Sheridan, Suite 514, Tulsa, Ok 74145-5719, 918/295-3996.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

460:20-1-7. Petition to initiate rulemaking

(a) Any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be submitted to the Office of the Director, Oklahoma Department of Mines,~~,~~ 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma, 73106.
(b) The petition shall be a concise statement of the facts, technical justification, and law which requires issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.
(c) Upon receipt of the petition, the Director shall determine if the petition sets forth the facts, technical justification or law previously considered in a petition or rulemaking of the same issue shall not be provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the office State register of public notices seeking comments from the public on the proposed change. The Director may hold a public hearing, may conduct an investigation, or take other action to determine whether the petition should be granted.
(d) Within 90 days from receipt of the petition, the Director shall issue a written decision either granting or denying the petition. The Director's decision shall constitute the final decision for the Department.
(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.
(2) If the petition is denied, the Director shall notify the petitioner in writing, setting forth the reasons for denial.

460:20-1-9. Availability of records

(a) Records required by the Act to be made available locally to the public shall be retained at the offices of the Department of Mines,~~,~~ 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.
(b) Other records or documents in the possession of the Office of Surface Mining may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

SUBCHAPTER 11. STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE MINING OPERATIONS

460:20-11-4. Initial processing, recording, and notification

(a) **Initial processing.**
(1) Within 30 days of receipt of a petition, the Department shall notify the petitioner by certified mail whether or the petition is complete under Section 460:20-11-3(b) or (c). Complete, for a designation or termination petition, means that the information required under Section 460:20-11-3(b) or (c) has been provided.
(2) The Department shall determine whether any identified coal resources exits in the area covered by the petition, without requiring any showing from the petitioner. If the Department finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.
(3) If the Department determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of Section 460:20-11-3(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.
(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Department shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations If the new petition does not contain such material, the Department may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceeding where the facts were considered.
(5) The Department shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(6) The Department may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such determination, the Department may issue a decision on a complete and accurate permit application and shall inform the petitioner why this Chapter cannot consider the part of the petition pertaining to the proposed permit area.

(b) **Notification.**

(1) Promptly after a petition is received, the Department shall notify the general public of the receipt of the petition by newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State registry of public notices. The Department shall make copies of the petition available to the public and shall provide copies of the petition to other interested government agencies, interveners, persons with ownership interests of record in the property. Proper notice shall comply with the requirements of applicable State law.

(2) The Department may provide for a hearing or a period of written comments on the completeness of petitions. If a hearing or comment period on the completeness is provided, the Department shall inform interested governmental agencies interveners, persons with an ownership interest of record in the property, and other persons, known to the Department to have an interest in the property of the opportunity to request to participate in such a hearing or to provide written comments. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law. Notice of such hearing shall be made by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State registry of public notices. The Department shall notify the petitioner of such a hearing by certified mail. On the basis of the Departmental review as well as consideration of all comments, the Department shall determine whether the petition is complete.

(3) Promptly after the determination that a petition is complete, the Department shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for 2 consecutive weeks in the locale of the area covered by the petition, in the newspaper providing the largest circulation in the region of the petitioned area, and in any official State register of public notices.

(c) **Interveners.** Until three days before the Departments holds a hearing under Section 460:20-11-5, any person may intervene in the proceedings by filing allegations of facts describing how the designation determination directly affects the~~,~~ intervener, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervener's name, address, and telephone number.

(d) **Recordkeeping.** Beginning immediately after a complete petition is filed, the Department shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Department. The Department shall make the record available for public inspection free of charge and for copying at reasonable costs during all normal hours at a central location of the county or multi-county area in which the land petitioned is located, and at the main office of the Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

SUBCHAPTER 15. REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

460:20-15-10.1. Suspension or rescission requirements for improvidently issued permits

(a) Except as provided in paragraph (b) of this Section, the Department must suspend or rescind the permit upon expiration of the time specified in Section 460:20-15-9.2(b) or (c) in this Subchapter unless permittee submits evidence and the Department finds that:

(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) The permittee or its operator no longer owns or controls the relevant operation;

(3) The Department's finding for suspension or rescission was in error;

(4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If the permittee has requested administrative review of a notice of proposed suspension or rescission under Section 460:20-15-9.2(e) of this Subchapter, the Department will not suspend or rescind the permit unless and until the Department's Decision that the permit was improvidently issued is affirmed.

(c) When the Department suspends or rescinds the permit under this section, it must:

(1) Issue the permittee a written notice requiring it to cease all surface coal mining operations under the permit and

(2) Post the notice at the Department field office closest to the permit area.

(d) If the Department suspends or rescinds the permit under this section, the Applicant or Operator may request administrative review of the notice under the procedures of 460:2, the Rules of Practice and Procedure for the Coal Reclamation Act.

(e) Any Applicant or Operator who requested an administrative review under paragraph (d) of this section, and who is still adversely affected or aggrieved by the decision of the hearing authority, may request judicial review under Section 460:20-19-3 and 75 O.S., Section 318 et seq.

SUBCHAPTER 17. REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

460:20-17-5. Transfer, assignment, or sale of permit rights

(a) **General.** No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the Department. At its discretion, the Department may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the Department that sufficient bond coverage will remain in place.

(b) **Application requirements.** An applicant for approval of the transfer, assignment, or sale of permit rights shall:

(1) Provide the Department with an application for approval of the proposed transfer, assignment, or sale including:

(A) The name and address of the existing permittee and permit number or ~~otheridentifier~~other identifier;

(B) A brief description of the proposed action requiring approval; and

(C) The legal, financial, compliance, and related information required by Subchapter 23 of this Chapter for the applicant for approval of the transfer, assignment, or sale ofpermit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations.

(c) **Public participation.** Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Department within a time specified by the Department.

(d) **Criteria for approval.** The Department may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor:

(1) Is eligible to receive a permit in accordance with Section 460:20-15-6.6 and 460:20-15-6.8 of this Chapter.

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee.

(3) Meets any other requirements specified by the Department.

(e) **Notification.**

(1) The Department shall notify the permittee, the ~~successorcommentors,and~~successor commenters, and OSM of its findings.

(2) The successor shall immediately provide notice to the Department of the consummation of the transfer, assignment, or sale of permit rights.

(f) **Continued operation under existing permit.** The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit.

SUBCHAPTER 27. SURFACE MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLANS

460:20-27-14. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments

(a) **General.** Each application shall include a general plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, with assistance from experts in related fields such as landscape architecture;

(B) Contain a description map, and cross section of the structure and its location;

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(E) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the Department. The Department shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Impoundments meeting the class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VT-TR60, Oct 1985). "Earth Dams and Reservoirs," Technical Release No. 60 (R-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby

incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. P87-157509/AS. Copies can be inspected at the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall:

(A) Be prepared by, or under the direction of, and certified, registered, professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(B) Include any geotechnical investigation, design, and construction requirements for the structure;

(C) Describe the operation and maintenance requirements for such structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does meet size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams, in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs" Technical Release No. 60 (TR-60) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer,

(B) Include any design and construction requirements for the structure, including any required geotechnical information;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(b) **Siltation structure.** Siltation structure, whether temporary or permanent, shall be designed in compliance with the requirements of Section 460:20-43-12 of this Chapter. Any impoundment or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall be designed to comply with the requirements of Section 460:20-43-14 of this Chapter. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216.

(c) **Sedimentation ponds: permanent and temporary impoundments.**

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of Section 460:20-43-14 of this Chapter. Each plan shall comply with the requirements of the Mine Health Safety Administration, 30 CFR 77.216.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 20 CFR 77.216-1 and 77.216-2.The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Department as part of the permit application in accordance with Subsection (a) of this section.

(3) For an impoundment not meeting the size or other criteria of 30 CFR 77.216 (a) or the Class B or C criteria for dams in TR-60, (210-VI-TR-60, Oct. 1985), "Earth Dams and Reservoirs" or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with minimum static safety factor of 1.3 specified in Section 460:20-43-14 (a)(3)(B) of this Chapter.

(d) **Coal processing waste banks.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-43-29 through 460:20-43-31 of this Chapter.

(e) **Coal processing waste dams and embankments.** Coal processing waste dams and embankments shall be designed to comply with the requirements of Sections ~~460:20-43-20~~460:20-43-29 through 460:20-43-31 of this Chapter. Each plan shall comply with the requirements of the Mine Health Safety Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground-water flow observed or anticipated during wet periods in an area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) **Stability analysis.** If the structure meets Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan under subsection (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

SUBCHAPTER 29. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

460:20-29-10. Maps: general requirements

The permit application shall include maps showing:

(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;

(3) The boundaries of all areas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(4) The location of all buildings in and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings (~~include~~including GPS coordinates for each building);

(5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(6) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(7) The locations of water-supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the Department, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(8) Each public road located in or within 100 feet of the proposed permit area;

(9) The boundaries of any public park and locations of any cultural and historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit or adjacent areas;

(10) Each cemetery that is located in or within 100 feet of the proposed permit area.

(11) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

(12) Other relevant information required by the Department.

460:20-29-11. Cross sections, maps, and plans

(a) The application shall include cross sections, maps, and plans showing:

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the over burden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface and the depth to the mined coal if available within the proposed permit and adjacent areas;

(6) Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas;

(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

(8) Location and extent of existing or previously surface mined areas within the proposed permit area;

(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area~~;~~.

(b) Cross sections, maps, and plans included in a permit application as required by this Section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer; a professional geologist; or a qualified registered, professional land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the Department.

SUBCHAPTER 31. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION

460:20-31-9. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments

(a) **General.** Each application shall include a general plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, with assistance from experts in related fields such as landscape architecture;

(B) Contain a description, map, and cross section of the structure and its location;

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(E) Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Department. The Department shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Impoundments meeting the class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VT-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(B) Include any geotechnical investigation, design, and construction requirements for the structure;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. (1985), "Earth Dams and Reservoirs" Technical Release No. 60 (TR-60) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer;

(B) Include any design and construction requirements for the structure, including any required geotechnical information;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(b) **Siltation structures.**

(1) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of Section 460:20-45-12 of this Chapter. Any impoundment or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of Section 460:20-45-24 of this Chapter.

(2) Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(c) **Permanent and temporary impoundments.** Permanent and temporary impoundments shall be designed to comply with the requirements of Section 460:20-45-14 of this Chapter. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(1) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216- 1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Department as part of the permit application in accordance with Subsection (a) of this section.

(2) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 460:20-45-14(a)(3)(B) of this Chapter.

(d) **Coal processing waste banks.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-45-29 through 460:20-45-31 of this Chapter.

(e) **Coal processing waste dams and embankments.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-45-29 through 460:20-45-31 of this Chapter. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location and depth of the borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment,

quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground-water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material

(f) **Stability analysis.** If the structure meets Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) then each plan under Subsections (b), (c), and (e) of this Section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

SUBCHAPTER 43. PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING STANDARDS

460:20-43-37. Contemporaneous reclamation

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under Section 460:20-33-8 of this Chapter.

(1) **Timing of backfilling and grading.**

(A) **Contour mining.** Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Department may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10(b)(3), that additional time is necessary.

(B) **Open pit mining with thin overburden.** Rough backfilling and grading shall occur in accordance with the time schedule approved by the Department, on the basis of the materials submitted under Section 460:20-27-10(b)(3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(C) **Area strip mining.** Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Department may grant additional time for rough backfilling and grading, if the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10(b)(3), that additional time is necessary.

(2) **Annual reporting.** Every twelve months after permit issuance and until final bond release, the permittee must submit to the Department a map or maps, signed and dated by a licensed professional engineer or licensed land surveyor, showing:

(A) The current permit boundaries;

(B) The cumulative disturbed acres;

(C) The cumulative acres that have been backfilled and graded to the approved postmining contours;

(D) The cumulative acres retopsoiled; ~~and~~

(E) The cumulative acres where permanent vegetation has been ~~established.~~established; and

(F) A map legend detailing the data used to create the map or maps.

SUBCHAPTER 45. PERMANENT PROGRAM PERFORMANCE STANDARDS: UNDERGROUND MINING ACTIVITIES

460:20-45-5. Casing and sealing of underground openings:~~temporary~~

(a) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(b) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

(c) When no longer needed for monitoring or other use approved by the Department upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under Section 460:20-45-8(g), each shaft, drift, adit, tunnel, exploratory hole, entry way or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Department in accordance with Section 460:20-45-4 of this Subchapter and consistent with Section 30 CFR 75.1711. ~~Permanent~~ Temporary closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering ground or surface waters.

SUBCHAPTER 63. INDIVIDUAL CIVIL PENALTIES

460:20-63-5. Procedure for assessment of individual civil penalty

(a) **Notice.** The Department shall service on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for a penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) **Final order and opportunity for review.** The notice of proposed individual civil penalty assessment shall become a final order of the Director 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice proposed individual civil penalty assessment a petition for review with the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106~~.~~, ~~Phone (405) 427-3859)~~ according to the Rules of Practice and Procedures.

(2) The Department and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure, or refusal.

(c) **Service.** The individual civil penalty shall be served on the person to whom it is directed or his or her designated service agent promptly after issuance as follows:

(1) By tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge at the exploration or surface coal mining and reclamation operation.

(2) As an alternative to paragraph (b)(1) of this Section, service may be made by sending a copy of the notice or Order by certified mail or by hand to the permittee or his or her designated agent. Service shall be complete upon tender of the Notice or Order or of the mail and shall not be deemed incomplete because of refusal to accept.

(d) **Service agent.** Designation by any person of an agent for service of notice and Orders shall be made in writing to the Department.

[OAR Docket #19-663; filed 6-26-19]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 10. LICENSURE AND REGULATION OF OPTOMETRISTS

[OAR Docket #19-717]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Regulation of Licensees
505:10-5-11. Authorized post-graduate educational work [AMENDED]
AUTHORITY:
Oklahoma Board of Examiners in Optometry; 59 O.S. §§ 583, 604
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 13, 2018
COMMENT PERIOD:
December 3, 2018 through January 7, 2019
PUBLIC HEARING:
January 11, 2019
ADOPTION:
January 11, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 17, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 23, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The adopted amendment to OAC 505:10-5-11 increases the number of continuing education hours annually authorized for practice management from three to six. This change does not alter the total number of continuing education hours required each year.
CONTACT PERSON:
Mary Walker, Administrative Assistant to the Board, 2008 S. Post Road, Suite 200, Midwest City, OK 73103, (405) 733-7836, Mary.Walker@optometry.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 23, 2019:

SUBCHAPTER 5. REGULATION OF LICENSEES

505:10-5-11. Authorized post-graduate educational work

(a) Every Optometrist must cause to be filed with the Board not later than June 30th of each year, beginning 2017 proof showing that during the preceding year he/she attended not less than twenty-five (25) hours of continuing medical education (CME) or an affidavit showing that he was unavoidably prevented, because of sickness or for some other reason satisfactory to the Board, from attending any such educational or post-graduate program. Of the ~~twenty-give~~twenty-five (25) required annually, up to six (6) hours of remote learning, up to ~~three (3)~~six (6) hours of practice management and a minimum of one (1) hour shall be judicious prescribing of dangerous drugs and controlled dangerous substances provided by the Oklahoma Association of Optometric Physicians or the Northeastern State University Oklahoma College of Optometry.

(b) The Board approves the following vendors providing continuing medical education (CME) provided the faculty or staff of each vendor substantially develops and presents the program and the program is free from any appearance of commercialism:

(1) Optometry college accredited by the American Optometric Council on Education

(2) American Optometric Association, or an affiliate of the American Optometric Association

(3) College of Optometrists in Vision Development
(4) Southeast Council of Optometry (SECO)
(5) Oklahoma Association of Optometric Physicians
(6) Great Western Council of Optometry (GWCO)
(7) Heart of America Contact Lens society
(8) American Academy of Optometry (AAO), or any affiliate of the AAO
(9) State Optometric Associations of the United States

(c) Any Optometrist desiring approval of any other continuing medical education (CME) must make a written request for approval to Office of the Board of Examiners in Optometry at least fifteen (15) days before he/she attends such program.

(d) Simultaneously with the requirement of this rule, every Optometrist shall not later than June 30, 2017 and each year thereafter file with the Board evidence that he or she has a current cardiopulmonary resuscitation card issued by the American Red Cross, or equivalent training.

[OAR Docket #19-717; filed 7-22-19]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #19-638]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Administrative Review and Hearings
590:1-3-13. Hearing before the Board of Trustees [AMENDED]
AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 909.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2018
COMMENT PERIOD:
January 2, 2019-February 20, 2019
PUBLIC HEARING:
February 21, 2019
ADOPTION:
February 21, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 26, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The amendment to 590:1-3-13 requires eight affirmative votes by the Board of Trustees for action in an administrative hearing. This is consistent with OPERS' statutes.
CONTACT PERSON:
Dessa Baker-Inman, General Counsel, Oklahoma Public Employees Retirement System, 5400 N. Grand Boulevard, Suite 400, Oklahoma City, Oklahoma 73112, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. ADMINISTRATIVE REVIEW AND HEARINGS

590:1-3-13. Hearing before the Board of Trustees

(a) **Procedure.** On a date set forth in the scheduling order, the Hearing Examiner's proposed order shall be set before the Board of Trustees for consideration. The parties shall have a reasonable opportunity to make a brief statement to the Board concerning the facts and any arguments and will be allowed to respond to any questions from the Trustees. The Board may review the complete record, including a transcript of the original hearing conducted by the Hearing Examiner and all documentary evidence. The Chair of the Board shall have authority to set the amount of time any party may have to present information to the Board.

(b) **Remand.** If the Board determines the facts to be in error or incomplete, the Board may remand the case, with instructions, to the Hearing Examiner for further evidentiary hearing.

(c) **Final order.** After consideration of the record and arguments, the Board shall accept, reject or modify the Hearing Examiner's proposed order. The final order shall include findings of fact and conclusions of law, separately stated. As in all matters before the Board, ~~seven (7)~~eight (8) affirmative votes are necessary to accept, reject or modify the order under consideration. A copy of the Board's final order shall be delivered to the claimant or the representative of the claimant within fifteen (15) days of final action by the Board.

[OAR Docket #19-638; filed 6-19-19]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[OAR Docket #19-639]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Credited Service
590:10-3-6. Full-time-equivalent employment [AMENDED]
590:10-3-8. Actuarial cost for purchases; delinquent service cost [AMENDED]
590:10-3-9. Purchase price payments [AMENDED]
AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 909.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2018
COMMENT PERIOD:
January 2, 2019-February 20, 2019

PUBLIC HEARING:
February 21, 2019
ADOPTION:
February 21, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 26, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
OPERS is amending three rules in Chapter 10. The amendment to 590:10-3-6 clarifies that OPERS can charge delinquent service costs, if applicable, when an elected official has failed to enroll in OPERS within the prescribed time period. The amendment to 590:10-3-8 clarifies that service purchases are allowed in whole months and are irrevocable. Service purchases are allowed for active, non-retired, OPERS members. The amendment to 590:10-3-9 allows for installment payments to be made consistent with bi-weekly payroll.
CONTACT PERSON:
Dessa Baker-Inman, General Counsel, Oklahoma Public Employees Retirement System, 5400 N. Grand Boulevard, Suite 400, Oklahoma City, Oklahoma 73112, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-6. Full-time-equivalent employment

(a) Full-time-equivalent employment is a term which refers to a member's actual employment with a participating employer of the System. Full-time-equivalent employment with a participating Employer must have been service for which required contributions have been paid the System.

(1) Members obtain full-time-equivalent employment in two ways:

(A) actual employment with a participating employer of the System, while participating and paying contributions to the System; and/or

(B) making certain types of purchases of service credit which represent actual employment with a participating employer of the System.

(2) Each hour for which retirement contributions are paid shall credit the member with one (1) hour of full-time-equivalent employment. One hundred seventy-three (173) hours shall constitute one month of full-time-equivalent employment

(3) Examples of service and/or employment which do not constitute full-time-equivalent employment include, but are not limited to: overtime, leave without pay, unused sick leave, bonus years, temporary or seasonal employment, prior service or military service granted free of charge, purchased military service credit other than purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, service purchased from another retirement system including transported service except as provided in Sections 590:10-11-4 and 590:10-11-13, and purchased incentive, severance or termination credit.

(4) Examples of service and/or employment which do constitute full-time-equivalent employment include, but are not limited to: purchased prior service, repayment of withdrawn contributions, purchase of elected service, purchased temporary total disability credit, purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, and delinquent service paid for by the employer.

(b) For purposes of determining the full-time-equivalent employment for elected officials, if the elected official is in office and participating for fifteen (15) days or more in either the first or last month in such office, the full month will be credited as service for such official. If an elected official resigns from office effective on a day other than the last day of the month, then such elected official shall not receive credit for a full month, but only those hours of full-time-equivalent employment service for that month.

(c) Elected officials who elect to participate within ninety (90) days after taking office, and those elected officials who fail to file an election within the ninety-day period and are automatically enrolled in the System, shall be deemed to begin service in the System on the date the elected official takes office. The elected official and the employer shall be responsible for the necessary contributions and any applicable delinquent service cost to cover such time period.

590:10-3-8. Actuarial cost for purchases; delinquent service cost

(a) **Actuarial Costs.** Effective January 1, 1991, all purchases of service credit, including incentive credit pursuant to 74 O.S. §913.5, or employer error costs pursuant to 74 O.S. §917(7), shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.

(2) The actuarial value shall be based upon the member's age, salary and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of determining this actuarial cost, the member's exact age in months shall be used in the calculation.

(4) For purposes of determining this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 50% male and a 50% female population, based

upon the actuarial assumptions in paragraph (1) of this section.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be averaged based upon the most current month's payroll information.

(6) In the event that the actuarial cost is less than the contributions that would have been required by law, the member and/or the employer shall pay the actual contributions cost.

(b) **Delinquent service costs.** The cost for purchases of delinquent service credit for service of one (1) month or less which is based on employer error and which is one (1) or more years past due shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If delinquent service of one (1) year or less is identified and paid for within one (1) year from the beginning service date, the cost will be calculated at employer and employee contributions only. The cost for delinquent service credit for service of more than one (1) month and which is over one (1) year past due shall be calculated at actuarial cost. The cost for any delinquent service credit for a retiree returning to work shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If an employee is no longer a participating member of the System and payment of delinquent service will not result in a change of the employee's eligibility for retirement or eligibility for any other purposes and will not change the number of years of service, the cost for delinquent service shall be calculated at contributions plus ten percent (10%) simple interest per annum. When the employer is responsible for the cost of delinquent service based on employer error pursuant to 74 O.S. § 917(7), the employer shall provide records documenting the salary, hours and contribution level of such member during the time period for which the delinquent service is to be billed. If the employer is unable to locate or otherwise provide the required records within a reasonable time as determined by the System, the System may use the available payroll records nearest the time of such delinquency for that member.

(c) **Remittance errors.** In the event a participating employer timely remits contributions for an individual member which are determined to be insufficient as a result of being based on an incorrect contribution rate or incorrectly-reported compensation, the employer shall be notified and pay the amount of the insufficiency plus ten percent (10%) simple interest per annum. The provisions of this paragraph shall not be applicable to employer remittances not received in a timely manner and which are subject to the provisions of paragraphs (a) and (b) of this section and 74 O.S. §920B.

(d) **Service Purchases.** Purchases of service credit are irrevocable, except when the purchase is determined by the System to not be authorized by statute or rule. Purchases of service credit shall be in whole months only. Except as otherwise provided by statute or rule, purchases of service credit can only be made by a member who is actively participating and who is not a retiree returning to work for a participating employer under 74 O.S. § 914 (E). Provided, a retiree returning to work may be permitted to purchase service pursuant to 74 O.S.§ 913 (A)(8).

590:10-3-9. Purchase price payments

(a) An active member of the System may elect the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular retirement contributions or any other payments to the System including Deferred Compensation. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly or bi-weekly increments. The minimum total monthly payment is $25.00. The minimum bi-weekly payment is $12.50. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The ~~monthly~~installment payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) Except as provided in subsection (8) of this section, if the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or the beneficiary of the member will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated for only the principal amount paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the 6 month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said 6 month period, or receipt of a signed

waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member or beneficiary if the member is in an unpaid leave status, if the payroll is not sufficient to handle the entire payment, in the event of payroll error where employer fails to withhold the proper amount or during the six (6) month period referred to in subsection (4) of this Section.

(7) Except as provided in subsection (8) of this section, if the purchase is terminated for any reason, the purchase cannot be made at any time in the future following the 6 month option referred to in Subsection (4) of this Section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(8) If the installment payment for the repayment of a previous withdrawal is terminated for any reason, the member, upon returning to employment and meeting the eligibility requirements for membership, may pay the remaining principal balance at any time prior to the month of the effective retirement date. The total due shall be the unpaid principal balance, plus interest pursuant to 74 O.S. § 917(5), calculated from the date of the last installment payment received and paid in a one-time lump sum amount.

(b) Effective January 1, 2002, in lieu of installment payments, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee to trustee transfer from a 457 deferred compensation plan or a 403(b) tax sheltered annuity program.

(c) Effective January 1, 2002, in lieu of installment payments or a direct transfer an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by a rollover. The payment may be made by participant rollover contributions and/or direct rollovers of eligible rollover distributions made after December 31, 2001, from the following:

(1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;

(2) an annuity contract described in section 403(b) of the Internal Revenue Code;

(3) an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over.

(d) Any payments permitted and authorized by this section or by the statutes governing the System which are elected by a member in lieu of installment payments shall be made no later than the month prior to the effective retirement date of the member.

[OAR Docket #19-639; filed 6-19-19]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 25. DEFERRED COMPENSATION

[OAR Docket #19-640]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Election to Defer Compensation
590:25-3-3. Discontinuation [AMENDED]
Subchapter 9. Benefits
590:25-9-9. Designated beneficiary [AMENDED]
AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 1701.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2018
COMMENT PERIOD:
January 2, 2019-February 20, 2019
PUBLIC HEARING:
February 21, 2019
ADOPTION:
February 21, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 26, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
OPERS is amending two rules in Chapter 25. The amendment to 590:25-3-3 aligns SoonerSave rules with Internal Revenue Code requirements. The amendment to 590:25-9-9 allows for electronic signatures and forms.
CONTACT PERSON:
Dessa Baker-Inman, General Counsel, Oklahoma Public Employees Retirement System, 5400 N. Grand Boulevard, Suite 400, Oklahoma City, Oklahoma 73112, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. ELECTION TO DEFER COMPENSATION

590:25-3-3. Discontinuation

The election of the Employee to participate under this Plan and the amount of compensation to be deferred is continuous, except that the Employee may discontinue participation or change his or her deferral amount at any time during the year by giving authenticated notice ~~at least thirty (30) days~~the month prior to the effective date of such change. An Employee who elects to discontinue participation shall not again become eligible to participate in the Plan until one (1) month has elapsed from the Discontinuation Date, or as provided in 590:25-9-12. For purposes of this rule, authenticated means participant communication through the Plan's website, through the Recordkeeper's dedicated toll-free telephone service or by approved written form.

SUBCHAPTER 9. BENEFITS

590:25-9-9. Designated beneficiary

The Participant shall have the right to file with the Board, a ~~written~~ beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. Following the death of the Participant, the beneficiary shall also have the right to file with the Board, a ~~written~~ beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the beneficiary's death.

(1) The form for this purpose shall be provided by the Board and will have no effect until it is signed, filed with the Board by the Participant or the beneficiary, and accepted by the Board.

(2) If the Participant or beneficiary dies without having a beneficiary form on file, the payments shall be made to the properly appointed fiduciary of the Participant's probate estate. Provided that if a fiduciary has not been appointed and qualified within one hundred twenty (120) days after the death, the payment may be made first, to a surviving spouse, second, to a surviving child or children, third, to a surviving parent or parents.

(3) The Participant and the beneficiary accepts and acknowledges that he has the burden for executing and filing, with the Board, a proper beneficiary designation form.

[OAR Docket #19-640; filed 6-19-19]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN

[OAR Docket #19-641]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Benefits and Distributions
590:35-13-6. Designated beneficiary [AMENDED]
AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 1707.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2018
COMMENT PERIOD:
January 2, 2019-February 20, 2019
PUBLIC HEARING:
February 21, 2019
ADOPTION:
February 21, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 26, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The amendment to 590:35-13-6 allows for electronic signatures and forms.
CONTACT PERSON:
Dessa Baker-Inman, General Counsel, Oklahoma Public Employees Retirement System, 5400 N. Grand Boulevard, Suite 400, Oklahoma City, Oklahoma 73112, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 13. BENEFITS AND DISTRIBUTIONS

590:35-13-6. Designated beneficiary

The Participant shall have the right to file with the Plan Administrator a ~~written~~ beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. The Beneficiary shall have the right to apply to the Plan Administrator to amend the payment option as previously elected by the Participant.

(1) The form for this purpose shall be provided by the Plan Administrator and will have no effect until it is signed, filed with the Plan Administrator by the Participant or Beneficiary, and accepted by the Plan Administrator.

(2) If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary, the payments shall be made to the beneficiary designated by the Participant pursuant to Section 590:25-9-9.

(3) If the Participant dies without having a Beneficiary form on file or is not survived by the designated Beneficiary under this Plan or the Deferred Compensation Plan, the payments shall be made to the properly appointed fiduciary of the Participant's probate estate. Provided

that if a fiduciary has not been appointed and qualified within one hundred twenty (120) days after the death, the payment may be made first, to a surviving spouse, second, to a surviving child or children, third, to a surviving parent or parents.

(4) The Participant accepts and acknowledges that he has the burden for executing and filing, with the Plan Administrator, a proper beneficiary designation form.

[OAR Docket #19-641; filed 6-19-19]

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

[OAR Docket #19-686]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Education and Examination Requirements
605:10-3-5 [AMENDED]
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-3 [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-2 [AMENDED]
605:10-7-7 [AMENDED]
605:10-7-8 [AMENDED]
605:10-7-8.1 [AMENDED]
605:10-7-8.2 [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-4 [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1 [AMENDED]
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline
605:10-17-4 [AMENDED]
AUTHORITY:
Oklahoma Real Estate Commission; 59 O.S., Section 858-208
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 15, 2019
COMMENT PERIOD:
January 15, 2019 - March 13, 2019
PUBLIC HEARING:
March 13, 2019
ADOPTION:
April 1, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
November 1, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
605:10-3-5
The purpose of the proposed rule amendments is to change the passing grade on the real estate salesperson exam from 75% to 70% so the scoring algorithms align with those established by the testing vendor.
605:10-5-3
The purpose of the proposed rule amendments is to reduce the provisional sales associate and post-license end of course examination questions from 200 to 150, and will change the end of course examination questions on the broker examination from 250 to 200 so as to avoid test exhaustion of the examination testers.
605:10-7-2
The purpose of the proposed rule amendment is to fully implement Title 59, Section 4003 and define the provisions of the statute related to the waiver of license fees for low-income individuals.
605:10-7-7
605:10-7-8
605:10-7-8.1
605:10-7-8.2
The purpose of the proposed rule amendment is to allow 30 days for the appointment of a new managing broker member or manager after the retirement or cessation of employment for any reason by a branch broker, managing corporate broker, managing partner, or managing broker member or manager.
605:10-9-4
The purpose of the proposed rule amendment is to clarify "prominent, conspicuous and easily identifiable" regarding a broker's name as being at least half the size of any other associate and/or team name within an advertisement.
605:10-13-1
The purpose of the proposed rule amendment is to clarify the requirement of all supervising brokers in maintaining trust accounts and their duty when depositing escrow/trust funds.
605:10-17-4
The purpose of the proposed rule amendment is to require licensees to include the date of a signature when preparing a purchase offer or contract.
CONTACT PERSON:
Sherry Kueffler, Executive Director, Oklahoma Real Estate Commission, 1915 N. Stiles, Ste 200, Oklahoma City, Oklahoma 73105, 405-522-8550, sherry@orec.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:

SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-5. Examinations

(a) **Applicant must appear in person.** When an application for examination has been submitted to the Commission, the applicant shall be required to appear in person, at a time and place to be designated by the Commission, and answer questions based on the required subject matter as prescribed elsewhere in the rules of this Chapter. On and after August 1, 2001, each broker examination fee shall be Seventy-five Dollars ($75.00) and each provisional sales associate/sales associate examination fee shall be Sixty Dollars ($60.00).

(b) **Special Accommodations.** In cases where special accommodations are necessary under the requirements of the Americans with Disabilities Act, applicants must notify the examination supplier in advance by submitting a written request, on a form prescribed by the Commission, describing the disability and necessary accommodations.

(c) **Failure to pass examination.** If an applicant fails to pass the examination prescribed by the Commission, the Commission may permit subsequent examinations upon receipt of a new examination fee for each examination to be attempted.

(d) **Applicant request to view failed examination.** An applicant who fails the examination has the option of reviewing their missed questions at the end of their examination. An applicant may challenge the validity of any question(s) they identify as incorrectly graded. A challenge to a question that pertains to the Oklahoma law portion of the examination will be sent to the Commission by the examination supplier. A challenge to a question that pertains to the national portion will fall under the review policy of the examination supplier. In either case, both the examination supplier and/or the Commission shall have five (5) business days in which to review and issue a response to the applicant. Applicants will be allowed up to one (1) hour to review their exam and the applicant will not be allowed to test on the same day they review a failed examination. No notes, pencils, or electronic devices will be allowed during a review nor will they be allowed to leave the examination area with the examination questions.

(e) **Application valid for one year.** The original examination application shall be valid for one (1) year from date of filing. After such date, an applicant must complete a new original application form.

(f) **Passing percentile of examination.** A score of seventy-five percent (75%) or more shall be considered a passing grade on the broker ~~or provisional sales associate/sales associate~~examination. A score of seventy percent (70%) or more shall be considered a passing grade on the provisional sales associate/sales associate examination.

(g) **Validity period of examination results.** The results of an examination wherein an applicant scored a passing grade shall be valid for one (1) year from the date of such examination.

(h) **Disciplinary examination fee.** A fee shall be charged for an examination which is directed by Order of the Commission as disciplinary action.

(i) **Examination voided.** A licensee or instructor applicant caught cheating during the course of a real estate examination shall:

(1) immediately forfeit the examination,

(2) be given a failing score,

(3) be disqualified from retaking the examination for one year, and

(4) be allowed to file an appeal with the Commission under Rule 605:10-1-3.

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-3. Standards for Commission approved real estate courses

(a) **Approved instructor.** Each in-class course offering shall be conducted by a Commission approved instructor. Each entity conducting a distance education course offering shall have available a Commission approved instructor. The instructor shall be available during normal business hours as posted by the instructor to answer questions about the course material and provide assistance as necessary.

(b) **Student must attend entire in-class instruction or complete all modules required for distance education instruction.** In order for an entity to certify a student as passing an approved course the student must either:

(1) attend the required number of hours of in-class instruction; or

(2) complete all instructional modules required for distance education instruction.

(c) **Student must successfully complete a prelicense, postlicense or distance education course offering examination.** In order for an entity to certify a student as passing an approved prelicense, postlicense or distance education course, the student must successfully complete an examination covering the contents of the course material.

(d) **Student transfers.** Except with the prior approval of the Commission, a student transferring from one course to another may not count any portion of the student's attendance or work in the former course toward passing the course. A student who enrolls in an entity which offers a Commission approved course may not transfer credit for a course or courses completed in that series to another entity unless the receiving entity offers the identical series of courses and the receiving entity agrees to accept and examine said student throughout successful completion.

(e) **Course examinations.** Each approved prelicense provisional sales associate course and postlicense course offering shall conclude with an end-of-course examination consisting of no less than ~~two hundred (200)~~one hundred and fifty (150) questions administered by the approved entity. Each approved prelicense broker course shall conclude with an end-of-course examination consisting of no less than ~~two hundred and fifty (250)~~two hundred (200) questions administered by the approved entity. Each approved distance continuing education course offering shall conclude with an end-of-course examination consisting of no less than seven (7) questions for each clock hour. End-of-course examination questions may not be the same as any previously used questions covering the respective course content.

(f) **Successful completion.** In order for a student to successfully complete a prelicense, postlicense or distance education course, the entity must require that the student complete all class material and/or modules and achieve a passing score of at least eighty percent (80%) on the entity's final examination. An entity shall require the student to complete sufficient material or modules to ensure mastery of the course offering, and shall require the student to complete the end-of-course examination. An entity may allow any student who fails to achieve a passing score the opportunity to take another examination without repeating instruction.

(g) **Grading standards.** In order for an entity to certify a student as passing an approved course, the student must meet the minimum grading standards established by this Section and the entity. On graded examinations for which this Section sets specific requirements, the entity's policy shall at least equal those requirements as listed in this Section. Other grading standards shall be in accordance with generally accepted educational standards. An entity shall publish grading standards

and give them to a student in a written form at the beginning of the course.

(h) **Commission may impose sanction.** The Commission may impose any sanction permitted by law or Rules of the Commission on the approval of any entity, director and/or instructor which fails to provide proper security for their course evaluation or examination and for failing to comply with standards as set out in this Chapter.

(i) **Each entity must post notice.** Each entity must post or provide a notice that is easily observed by any person desiring to enroll in a prelicense course. The notice must at least include the following language: Oklahoma Statutes, Title 59, Section 858.301.1 "Effective November 1, 2009, state law prohibits the issuance of a real estate license to any person who has been convicted, pled guilty or pled nolo contendere to a felony for a pre-determined number of years based on the classification of said felony. For clarification, please contact the Commission and/or review the cited section of law as referenced herein. Additionally, if the applicant has delinquent unpaid child support or student loans, the applicant must check with the Real Estate Commission before enrolling in this class. The Commission will allow the applicant to seek preapproval prior to enrolling in a pre-license course."

(j) **Additional distance education course requirements.**

(1) Each course shall contain suitable learning objectives.

(2) Overview statements must be included for each course providing a quick preview of what is contained in the offering.

(3) A complete set of questions and an answer key must be provided to the Commission with each course application. An answer key may not be included in any course materials provided to the student.

(4) From the date of enrollment, the course shall have a validity period of six (6) months in which to allow successful completion to be attained.

(5) Entities must include information with the course material that clearly informs the student of the completion time frame, passing and examination requirements, and any other relevant information necessary to complete the course.

(6) Each course must include a statement that the information presented in the course should not be used as a substitute for competent legal advice.

(7) Course offerings must be sufficient in scope and content to justify the hours requested for approval.

(k) Each entity shall promote the Basic Course of Real Estate as Part I of a two part series and the Provisional Postlicense Course of Real Estate as Part II of that series. Applicants are to be advised that Part II of the series is not to begin until after license issuance and shall be completed prior to their first license expiration.

(l) All materials that are distributed to students in any class must be current and up-to-date with the License Code and Rules and state or federal laws.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-2. License terms and fees; renewals; reinstatements

(a) **License term and fees.** Each original license issued under the Code shall be issued to expire at the end of the thirty-sixth (36) month including the month of issuance. Each original provisional sales associate license issued under the Code shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. Fees are non-refundable and are as follows:

(1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be Two Hundred and Ten Dollars ($210.00).

(2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be One Hundred and Twenty-five Dollars ($125.00). In order to activate a license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Thirty Dollars ($130.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(3) For an original broker associate license and each subsequent license renewal, the fee shall be One Hundred and Eighty Dollars ($180.00).

(4) For an inactive original broker associate license and each subsequent inactive license renewal, the fee shall be One Hundred and Ten Dollars ($110.00). In order to activate a license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Fifteen Dollars ($115.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(5) For an active original sales associate license and each subsequent active license renewal the fee shall be One Hundred and Fifty Dollars ($150.00).

(6) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be Ninety-five Dollars ($95.00). In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay One Hundred Dollars ($100.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(7) For an original provisional sales associate license that is non-renewable the fee shall be Seventy Dollars ($70.00).

(8) For an original branch office license and each subsequent license renewal the fee shall be One Hundred and Twenty-five Dollars ($125.00).

(9) For each duplicate license or pocket card, where the original is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents ($7.50) shall be charged.

(10) The Fifteen Dollar ($15.00) Education and Recovery Fund fee, shall be added and payable with the license fee for an original license and for each subsequent license renewal. Exceptions to this rule are: 1) a provisional sales associate license fee shall be Five Dollars ($5.00) for their twelve (12) month license term; and, 2) a branch office shall not pay the fee.

(b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.

(c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of the month of the designated license term. A person who allows their license to expire shall be considered an applicant and subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

(d) **Late penalty.** All renewals shall be filed on or before midnight of the tenth day of the month in which said license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date for all renewals except electronic online renewal wherein this exception would not apply. Any such renewal application filed after such date shall be subject to a late penalty fee of Ten Dollars ($10.00).

(e) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such a case, the next Commission working day shall be considered the due date. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

(f) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of same such license upon payment of an amount equal to the current examination fee in addition to the license and late penalty fee(s) for each delinquent license period(s). The following documents and fees must be submitted:

(1) **Lapsed less than one year.** In the case of a license lapsed less than one year:

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) National criminal history check.

(D) Documents as required by the Commission.

(2) **Lapsed more than one year but less than three years.** In the case of a license lapsed more than one year but less than three years:

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) National criminal history check.

(D) A completed reinstatement application.

(E) Successful completion of the appropriate licensing examination.

(F) A statement that the applicant has read a current License Code and Rules booklet.

(G) Documents as required by the Commission.

(3) **Lapsed more than three years.** If an application is submitted more than three (3) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.

(g) **Reinstatement of a provisional sales associate license wherein post-license education was completed prior to license expiration date.** An applicant who successfully completed the post-license education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (f), (1) through (3).

(h) **Reinstatement of a provisional sales associate license wherein post-license education was not completed prior to license expiration date.** An applicant who has not successfully completed the post- license education requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.

(i) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of three (3) years from the effective date of license revocation, except for an applicant whose license was automatically revoked pursuant to Sections 858-402 or 858-604 of Title 59, Oklahoma Statutes. Upon the passage of the three (3) year period, the applicant shall be required to comply with the requirements of an original applicant.

(j) **Reinstatement of an automatically revoked license.** An applicant who has had their license automatically revoked, pursuant to Section 858-402 or 858-604 of Title 59 of the Oklahoma Statutes, shall be required to comply with the requirements of (f) of this section. In addition, reinstatement will not be granted until all outstanding amounts due the Commission have been paid in full.

(k) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled license applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

(1) **Reinstatement with term of license still current.** A surrendered or cancelled license applicant whose license term is still current:

(A) Applicable reinstatement fee equal to the current examination fee.

(B) Re-issuance fee equal to the transfer of license fee.

(C) Documents as required by the Commission.

(D) Criminal history background check.

(2) **Reinstatement with term of license expired.** A surrendered or cancelled license applicant whose license term has expired shall be required to comply with the requirements of (f) of this section.

(3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:

(A) If a provisional sales associate completed the post-license requirement on or before the first license

expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (f), (1) through (2).

(B) If a provisional sales associate did not complete the post-license requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.

(l) **Continuing education requirement.** Each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that they have completed the continuing education requirements enumerated in Section 858-307.2 of Title 59. An applicant seeking active reinstatement of a lapsed license must submit evidence that all continuing education requirements have been completed for each term in which an active license is requested.

(m) **License fees prorated.** If a real estate sales associate qualifies for a license as a real estate broker associate or broker, or if a real estate broker associate qualifies for a license as a real estate broker, the unused license fee shall be credited to the new license fee. The unused license fee credit shall commence with the first full month following the month in which the broker license is to be issued.

(n) **License expires after effective date of national criminal history check.**

(1) Any licensee who allows their license to expire shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed fingerprint card, application Part A, and fee as stated elsewhere in these rules for the background search. If, the Commission does not receive a completed Part A of the application and completed finger print card and fee within thirty (30) days from the date of request by the Commission, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Thereafter, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation forms and fees, as stated elsewhere in these rules, have been received by the Commission. However, if the finger print card is rejected for the purposes of a national criminal history check, the Commission will provide written notice to the licensee and the licensee must submit a new and unique fingerprint card to the Commission within thirty (30) days of receipt of such notice or the license will be placed on inactive status.

(2) A provisional sales associate who completes the Provisional Post-License Course prior to their first license expiration date but fails to timely renew the license shall be eligible to apply under the requirement under the preceding paragraph. However, after a period of three (3) years from the date of the license expiration such applicant shall no longer be eligible to apply under this section.

(o) **Issuance of license from provisional sales associate to sales associate.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional Post- license Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the end of the provisional sales associate's license term and until the provisional sales associate has submitted evidence of successful completion of the forty-five (45) clock hour post-license course requirement and submitted all required form(s) and fee(s) as required by the Commission.

(p) **Active sales associate to inactive broker associate, or sales associate and/or broker associate to inactive broker license - no remaining credit to be given.** In the event an active sales associate, within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker associate license, the Commission shall not credit the difference in license fees. In the event an active sales associate or broker associate within six (6) months of obtaining their original license, rein- statement or license renewal qualifies for an inactive broker license, the Commission shall not credit the difference in the license fees.

(q) **Licensee on active duty as a member of the Armed Forces of the United States.**

(1) In accordance with Title 59, O.S., Section 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act while a license holder is on active duty the license may be renewed without payment of the license and education and recovery fund fee and meeting the continuing education requirement. Such waiver shall be requested in writing to the Commission prior to license expiration along with evidence of the order for active duty. The license issued pursuant to this rule may be continued as long as the licensee is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty. Upon discharge from active duty and a request for license activation, the licensee shall submit to the Commission evidence of successful completion of the continuing education requirement for the current license renewal term.

(2) If a licensee on active duty does not request such a waiver in writing and the license expires, the applicant may, by written request provide the Commission documentation as required in subparagraph (1) of this subsection; however, no later than one (1) year after discharge from active duty.

(3) In the event a license expires during the events as noted herein, the Commission shall waive the criminal history background check and license examination.

(4) **Member of the National Guard or reserve component of the armed forces.** In accordance with Title 72, Chapter 1, Section 48.2 Extension and Renewal of Professional Licenses, any licensee whose license expires while on active duty as a member of the National Guard or reserve component of the armed forces shall be extended

until no later than one (1) year after the member is discharged from active duty status. Upon the Commission receiving a copy of the official orders calling the mem ber or reservist to active duty and official orders discharging the member or reservist from active duty all licensee fee and continuing education shall be waived for this time period as well as the criminal history background check and license examination.

(r) **Reinstatement for corporation, association or partnership.**

(1) A corporation, association or partnership that has lapsed for less than three (3) years that wishes to reinstate must submit:

(A) License and late penalty fees.

(B) Reinstatement forms and documents as required by the Commission.

(C) If the corporation or association has been lapsed for more than sixty (60) days, a current "Certification of Good Standing."

(2) Any corporation, association or partnership that has lapsed for more than three (3) years must submit an original application to be considered for licensure.

(s) **Reinstatement for branch offices.**

(1) A branch office that is lapsed for less than three (3) years that wishes to reinstate must submit:

(A) License fee and late penalty fees.

(B) Reinstatement forms and documents as required by the Commission

(2) Any branch office that has lapsed for more than three (3) years must submit an original application as a new branch office.

(t) **Specific license fees waived for low-income individuals.** In accordance with Title 59, Section 4003, any applicant who can present satisfactory evidence of being a low-income individual shall receive a one-time one-year waiver of the licensure fees as outlined in 605:10-7-2 (a.) Such waiver shall be prorated for a multi-year license so that the applicant shall only receive a waiver for one year of the applicable license fees. For the purposes of this section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, or whose household adjusted gross income is below 140% of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation. Satisfactory evidence that the applicant is a low-income individual must be made upon forms provided by the Commission and must be presented upon application for original licensure.

605:10-7-7. Branch offices

(a) **Each additional office must be licensed.** If a broker desires to do business from more than one office location, the broker must license each additional office location as a branch office by submitting forms and fees as required by the Commission. The license shall be maintained in the branch office and available upon request.

(b) **Associate's license issued to branch office.** An associate's license shall be issued to and maintained in the office to which the associate is assigned.

(c) **Broker to designate a branch office broker to act.** A broker shall designate a branch office broker, other than himself or herself, to act as broker for each location, to supervise the activities of the branch office. The branch office shall be licensed in conformance with Section 858-310 of the Code. The branch office broker may be designated to perform all duties and sign documents on behalf of the broker with respect to the branch office at the discretion of the broker. Such designation shall be in writing and filed with the Commission. The branch office broker assumes the responsibility in conjunction with the broker, for all associates assigned to the branch office.

(d) **Broker may act as branch office broker; restriction.** A broker may act as the branch office broker if the branch office is located at the same location as the main office upon the appropriate documents and fees being filed with the Commission.

(e) **Reappointment of branch office broker.** In the event of the death or disability of the designated branch office broker, or in the event of the retirement or cessation of employment for any reason by the designated branch office broker, and the branch office is to continue business, the main office broker shall appoint a new branch office broker and file the appropriate documents with the Commission within thirty (30) days of the occurrence of the event. ~~In the event of the retirement or cessation of employment for any reason by the designated branch office broker, and the branch office is to continue business, the main office broker shall appoint a new branch office broker and file the appropriate documents with the Commission within ten (10) days of the occurrence of the event.~~

(f) **Branch office must utilize the same name or trade name of main office.** A branch office may utilize a trade name which is different than the main office so long as the broker registers the name(s) with the Commission.

605:10-7-8. Corporation licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each corporation who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License "Code" shall apply as a real estate broker. Upon approval by the Commission, the corporation shall be granted a real estate broker license. In order to obtain a license, the corporation shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) Verification that the corporation is authorized to transact business as a corporation in the State of Oklahoma and that the corporation is in good standing in the State of Oklahoma.

(3) Corporation must be in compliance with Title 59, O.S., Section 858-312.1 of the License "Code."

(4) Corporation must have a managing corporate broker who holds a separate license as a real estate broker.

(5) The designation of a managing corporate broker shall be established by sworn statement signed by the President of the corporation stating the date and place such action was effected.

(6) In the event of the death or disability of the managing corporate broker, or the event of the retirement or cessation of employment for any reason by the managing corporate broker, the cooperation shall be required to appoint a new managing corporate broker and such notice of change must be filed in the Commission office no later than thirty (30) days of the occurrence of the event. ~~In the event of the retirement or cessation of employment for any reason of the managing corporate broker, the corporation shall be required to appoint a new managing corporate broker and such notice of change must be filed in the Commission office no later than ten (10) working days of the occurrence of the event.~~ The notice of change in a managing corporate broker must be accompanied by the appropriate documents as required by the Commission and a Twenty-five Dollar ($25.00) change of status fee.

(7) The corporation is to notify the Commission in writing within ten (10) days of the date of a change in corporate officers.

(b) **Corporation and managing corporate broker responsible for acts.** The managing corporate broker in conjunction with the corporation is responsible for all acts of the corporation, including the acts of all associates associated with the corporation.

(c) **Corporation closing requirements or partial ceasing of real estate activities.** When a corporation discontinues a portion of real estate activities or ceases all real estate activities, the corporation is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (n).

(d) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting Licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

605:10-7-8.1. Partnership licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each partnership who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License "Code" shall apply as a real estate broker. Upon approval by the Commission, the partnership shall be granted a real estate broker license. In order to obtain a license, the partnership shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) A written statement signed by all partners attesting to the formation of a partnership and that it is in good standing in the State of Oklahoma.

(3) Partnership must be in compliance with Title 59, O.S., Section 858-312.1 of the License "Code."

(4) Partnership must have a minimum of two managing partners who each hold a separate license as a real estate broker.

(5) The designation of the managing partners shall be established by sworn statement signed by the managing partners of the partnership stating the date and place such action was effected.

(6) In the event of the death or disability of the managing partner(s), or in the event of the retirement or cessation of employment for any reason of the managing partner(s), the partnership is dissolved unless the partnership agreement provides otherwise. If the partnership agreement provides for the continuation of the partnership after the loss of a partner, the partnership shall be required to appoint a new managing partner and such notice of change must be filed in the Commission office no later than thirty (30) working days of the occurrence of the event. ~~In the event of the retirement or cessation of employment for any reason of the managing partner(s), the partnership is dissolved unless the partnership agreement provides otherwise. If the partnership agreement provides for the continuation of the partnership after the loss of a partner, the partnership shall be required to appoint a new managing partner and such notice of change must be filed in the Commission office no later than ten (10) working days of the occurrence of the event.~~ The notice of change in managing partners must be accompanied by the appropriate documents as required by the Commission and a Twenty-five Dollar ($25.00) change of status fee.

(b) **Partnership and managing partners responsible for acts.** The managing partners in conjunction with the partnership are responsible for all acts of the partnership, including the acts of all associates associated with the partnership. If a corporation or association is a partner of the partnership a letter must be submitted by the firm acknowledging that the managing member of the association or managing broker of the corporation is responsible for all acts of the partnership, including the acts of all associates associated with the partnership.

(c) **Partnership closing requirements or partial ceasing of real estate activities.** When a partnership discontinues a portion of real estate activities or ceases all real estate activities, the partnership is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (n).

(d) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

605:10-7-8.2. Association licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each association who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License "Code" shall apply as a real estate broker. Upon approval by the Commission, the association shall be granted a real estate broker

license. In order to obtain a license, the association shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) Verification that the association is authorized to transact business as an association in the State of Oklahoma and that the association is in good standing in the State of Oklahoma.

(3) Association must be in compliance with Title 59, O.S., Section 858-312.1 of the License "Code".

(4) Association must have a managing member or manager who holds a separate license as a real estate broker.

(5) The designation of a managing broker member or manager shall be established by sworn statement signed by an authorized member or manager of the association stating the date and place such action was effected.

(6) In the event of the death or disability of the managing broker member or manager, or in the event of the retirement or cessation of employment for any reason of the managing broker member or manager, the association shall be required to appoint a new managing broker member or manager and such notice of change must be filed in the Commission office no later than thirty (30) working days of the occurrence of the event. ~~In the event of the retirement or cessation of employment for any reason of the managing broker member or manager, the association shall be required to appoint a new managing broker member or manager and such notice of change must be filed in the Commission office no later than ten (10) working days of the occurrence of the event.~~ The notice of change in a managing broker member or manager must be accompanied by the appropriate documents as required by the Commission and a Twenty-five Dollar ($25.00) change of status fee.

(b) **Association and managing broker member or manager responsible for acts.** The managing broker member or manager in conjunction with the association is responsible for all acts of the association, including the acts of all associates associated with the association.

(c) **Association closing requirements or partial ceasing of real estate activities.** When an association discontinues a portion of the real estate activities or ceases all real estate activities, the association is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (n).

(d) **Limited liability company.** A limited liability company shall be considered as an association.

(e) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-4. Advertising

(a) **Requirements and prohibitions.**

(1) A broker, when advertising, must use their registered business trade name or the name under which the broker is licensed; however, yard signs must also include the broker's office telephone number. A firm shall not register or use a trade name of another licensed firm. In addition, the advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable as long as they are easily identifiable by the public as such.

(2) No real estate advertisement shall show only a post office box number, telephone number or street address.

(3) A broker, when operating under a franchise name, shall clearly reveal in all office identification and in all advertising other than institutional type advertising designed to promote a common name, the franchise name along with the name of the broker or business trade name as registered with the Commission. A franchise name shall not be the complete business trade name. All institutional type franchise advertising shall indicate that each office is independently owned and operated.

(4) A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a particular race, color, creed, religion, national origin, familial status or handicap. The contents of any advertisement must be confined to information relative to the property itself, and any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, age or handicap is prohibited.

(5) Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.

(6) A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.

(7) Social networking. A licensee who is engaged in licensed activities through social networking mediums must indicate their license status and include their broker's reference as required elsewhere in this rule.

(8) A licensee shall not use a yard sign at the licensee's personal residence as a marketing tool, to make it appear the real property is for sale, lease or rent when such is not the case.

(9) A broker may, or authorize an associate to, promote a seller incentive with the consent of the seller. The publicity must clearly indicate the incentive is being offered by the seller and not by the licensee and that the promotion only applies to a seller's particular property or properties.

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only the associate's name.

(2) All advertising by an associate must be under the direct supervision of the associate's broker.

(3) In all advertising, the associate must include the name of the associate's broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable. For the purposes of this section, "prominent, conspicuous and easily identifiable" means that the broker's reference shall be at least fifty percent (50%) or larger than any associate reference included in the advertisement. If approved by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a firm's name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a firm's name.

(C) An associate's contact information.

(D) A slogan which cannot be construed as that of a firm's name.

(E) A domain/website name that is registered with the broker. Within this domain/website, the broker's reference shall appear on every individual page and/or frame.

(4) An associate's contact information may be added to a yard sign if the yard sign contains the registered name or trade name and office telephone number of the broker so long as it is approved by the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

(c) **Team advertising.**

(1) A team is prohibited from advertising only under the team name.

(2) All advertising by a team must be under the direct supervision of the team's broker.

(3) All team advertising must include the name of the team's broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable. For the purposes of this section, "prominent, conspicuous and easily identifiable" means that the broker's reference shall be at least fifty percent (50%) or larger than any team reference included in the advertisement. If approved by the broker, a team may include in the advertisement:

(A) The team's personal insignia of which such approval is to be maintained by the broker.

(B) The team's contact information.

(C) A team slogan approved by the broker.

(D) A domain/website name that is registered with the broker. Within this domain/website, the broker's reference shall appear on every individual page and/or frame.

(d) **Licensee acting as owner, purchaser or direct employee of owner.**

(1) When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate firm, the licensee is required to disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed. On all purchase or lease contracts the licensee is to include their license number.

(2) A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for an entity is not required to indicate in the advertising that he or she is licensed.

SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

605:10-13-1. Duty to account; broker

(a) **Deposit and account of trust/escrow funds.**

(1) The obligation of a broker to remit monies, valuable documents and other property coming into his or her possession within the meaning of subparagraph six (6), Section 858-312 of the "Code" shall be construed to include, but shall not be limited to, the following:

(A) Shall deposit all checks and monies of whatever kind and nature belonging to others in a separate account in a financial institution wherein the deposits are insured by an agency of the federal government.

(B) The broker is required to be a signor on ~~the~~any brokerage account where such funds are held.

(C) ~~The~~Any brokerage account where such funds are held must be in the name of the broker as it appears on the license or trade name as registered with the Commission and styled as a trust or escrow account and shall be maintained by the broker as a depository for deposits belonging to others.

(D) All escrow funds shall be deposited before the end of the third banking day following acceptance of an offer by an offeree or receipt of escrow funds unless otherwise agreed to in writing by all interested parties.

(E) The broker shall ~~maintain such funds~~ensure such funds are maintained in said account until the transaction involved is consummated or terminated and proper accounting made.

(F) The broker shall at all times, maintain an accurate and detailed record thereof.

(2) Funds referred to in this subsection shall include, but are not limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by buyer or seller for the payment of expenses in connection with closing of real estate transactions, and money advanced by his or her principal or others for expenditures on behalf of subject principal.

(b) **Commingling prohibited.** A broker may not keep any personal funds in the trust account except amounts sufficient to insure the integrity of the account and cover any charges made by the financial institution for servicing the trust or escrow account.

(c) **Interest bearing account.** A broker shall not be prohibited from placing escrow monies in an interest bearing account; however, he or she must disclose in writing to all parties that the account bears interest and identify the party receiving the interest. The Commission does not prohibit the broker from receiving the earned interest. In the event the interest is credited to the broker, the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or insure that the amount does not exceed a reasonable amount to cover normal financial institution charges. The broker is required to maintain complete and accurate records of the interest earned. The interest bearing account must be a demand type account; this prohibits the use of certificate of deposit or other types of time deposits as trust/escrow accounts.

(d) **Trust account not mandatory unless funds or items are held.** A broker shall not be required to maintain a trust or escrow account unless monies or other depositable items belonging to others are accepted by the broker and require the broker to place the monies or items in the broker's trust account.

(e) **Trust accounts must be registered with commission.** A broker shall be required to notify the Commission in writing of all trust or escrow accounts, security deposit accounts, rental management operating accounts, and interest bearing accounts in which trust funds are held. Further, if a broker is a signor on a principal's account, the broker shall register that account as a trust account. A broker shall inform the Commission in writing of any accounts which are closed and no longer in use.

(f) **Settlement statement to be furnished.** A broker shall insure that a signed settlement statement is furnished in each real estate transaction wherein he or she acts as broker, at the time such transaction is consummated.

(g) **Payment of funds.** A broker shall pay over all sums of money held by him or her promptly after the closing of any transaction, provided, that upon any hearing to suspend or revoke his or her license under this Section, the failure to pay over any sums of money held by him or her within three (3) days after a closing shall be prima facie evidence of a violation by such person under the provisions of this Section.

(h) **Return of earnest money or items.** In the event a transaction does not consummate, a broker shall promptly disburse the earnest money or items to the proper party in accordance with the terms of the contract. In the event a dispute arises prior to the disbursement, the broker shall follow rule 605:10-13-3 or may file an interpleader action with the appropriate court.

(i) **Documents, items, or monies furnished to all parties.** A broker shall insure the timely delivery or return of all documents, items or monies to a party to a transaction wherein the broker or the broker's associate have provided services.

(j) **Inform all parties pertaining to escrow being held.** A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a non-depositable item, the value of the item, and in whose custody the item is being placed.

(k) **Bookkeeping system required.** A broker shall maintain a bookkeeping system i.e., canceled checks, check book, deposit receipts, general accounts ledger, etc. which will accurately and clearly disclose full compliance with the Law relating to the maintaining of trust accounts.

(l) **Record retention.** A broker shall maintain all records and files for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursal of funds. Records as referenced in this paragraph shall be destroyed in a secure manner.

(m) **Requirements for storage of records on alternative media.** The Real Estate Commission establishes the following requirements for storage of trust account and transaction records stored on alternative media. Alternative media is defined as media that uses an electronic device to store or retrieve the information that pertains to the trust account and transaction documentation. This requirement applies to any computer technology utilized by the broker to create, store or retrieve the aforementioned documentation, whether the computerized device is internal or external to the broker's computer equipment. If a broker utilizes his own equipment or a third party vendor to create, store or retrieve this information, the broker shall ensure that the documentation is maintained and able to be retrieved for the five (5) year time period as required by the Commission.

(1) Trust account records shall be maintained by the broker in their original format for a minimum of two (2) years. Trust account records may then be transferred to an alternative media for the remaining required record retention time.

(2) Records, with the exception of trust account records, may be transferred at any time to an alternative media for the remaining required retention time.

(3) After documents are converted to alternative media, a quality assurance check shall be done to ensure that every document was imaged and can be reproduced in a legible and readable condition on a display device.

(4) After the quality assurance check is completed, the original documents may be destroyed.

(5) A broker shall maintain the alternative media and a means of viewing and retrieving records, and shall provide a true, correct and legible paper copy to the Commission upon request.

(6) A broker shall store copies of the alternative media and the equipment used to read the media in an environment and at a level of quality conducive to maintain the ability to reproduce the media throughout the retention period. Reproduce means a process in which a document can be converted from the alternative media to a paper copy that is legible and able to be read.

(n) **Cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:

(1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:

(A) Return the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission and advise the Commission as to the circumstances involving any not returned.

(B) Release forms must be filed for all licensees affiliated with the firm.

(C) The broker must either transfer to a new firm or place his or her license on inactive status.

(2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.

(3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.

(4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursal of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.

(5) In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursal of funds. In this event, the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.

(6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:

(A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.

(B) The name and address of the authorized broker, entity or legal representative.

(C) A trust account reconciliation sheet indicating ledger balance and financial institution balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.

(D) A statement indicating that written agreements were obtained from all parties to each transaction agreeing to the transfer of the funds and/or contracts to another responsible broker, authorized entity or legal representative and that each depositor was notified of the effective date of transfer, and the name of the responsible person or entity.

(7) Any firm merger shall have a thirty (30) day time period in which to provide the Commission the documentation as referenced in subparagraph (n) of this rule. Firm merger means that a licensed firm has been acquired by another licensed firm and the firm that was acquired is ceasing a portion or all of its licensed activities.

(o) **Security breach of personal information.**

(1) Security breach of personal information as defined in Title 24, Oklahoma Statutes, Sections 161-166 means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by a licensee as part of a database of personal information regarding multiple persons. Personal information means the first name or first initial and last name in combination with and linked to any one or more of the following data elements:

(A) social security number,

(B) driver license number or state identification card number issued in lieu of a driver license, or

(C) financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to the financial accounts.

(2) The breach of information would not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

(3) In the event personal information is breached, the licensee is required to send notice to the Commission and to all concerned persons whose information was breached by an unauthorized person or source as required in Title 24, O.S., Section 162 . The licensee is required to comply with all requirements within the Security Breach Notification Act or be subject to disciplinary action by the Commission.

SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

605:10-17-4. Prohibited dealings

Within the meaning of subsection 8 of Section 858-312 of the "Code," untrustworthy, improper, fraudulent or dishonest dealing shall include, but not be limited to, the following:

(1) The making of a brokerage service contract without a date of termination.

(2) Purchasing of property by a licensee for himself or herself or another entity in which the licensee has an interest as defined in 605:10-15-1 (c), if such property is listed with the broker or the broker's firm, without first making full disclosure thereof and obtaining the approval of the owner, or the failure by the licensee to exert the licensee's best effort in order to later purchase or acquire the property for themself or another entity in which they have an interest as defined in 605:10-15-1 (c).

(3) Repeated misrepresentations, even though not fraudulent, which occur as a result of the failure by the licensee to inform himself or herself of pertinent facts concerning property, as to which he or she is performing services.

(4) Procuring the ~~signature~~signature(s) and dates of such signature(s) to a purchase offer or contract or to any lease or lease proposal which has no definite purchase price or lease rental, or no method of payment, termination date, possession date or property description.
(5) The payment of any fees or amounts due the Commission with a check that is dishonored upon presentation to the bank on which the check is drawn.
(6) Lending a broker's license to an associate; permitting an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of the broker's license to enable an associate licensed with the broker to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of the broker's sponsorship.
(7) Failure to make known in writing to any purchaser any interest the licensee has in the property they are selling.
(8) Failure of the licensee to inform the buyer and seller in writing at the time the offer is presented that the buyer and seller will be expected to pay certain closing costs, brokerage service costs, and approximate amount of said costs.
(9) Failure, upon demand in writing, to respond to a complaint in writing, or to disclose any information within licensee's knowledge, or to produce any document, book or record in licensee's possession or under licensee's control that is real estate related and under the jurisdiction of the Real Estate Commission, for inspection to a member of the Commission staff or any other lawful representative of the Commission.
(10) Failure to reduce an offer to writing, when a proposed purchaser requests such offer to be submitted.
(11) Failure to submit all bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.
(12) Any conduct in a real estate transaction which demonstrates bad faith or incompetency.
(13) Failure to act, in marketing the licensee's own property, with the same good faith as when acting in the capacity of a real estate licensee.
(14) An associate who does not possess the license of a broker or branch office broker as defined in the rules, but is intentionally acting in the capacity of a broker or branch office broker.
(15) Discouraging a party from obtaining an inspection on a property.
(16) Allowing access to, or control of, real property without the owner's authorization.
(17) Knowingly providing false or misleading information to the Commission during the course of an investigation.
(18) Interfering with an investigation by means of persuading, intimidating or threatening any party or witness, or tampering with or withholding evidence relating to the investigation.
(19) Knowingly cooperating with an unlicensed person or entity to perform licensed real estate activities as required by Title 59 O.S. Section 858-301.
(20) Failing to disclose any known immediate family relationship to a party to the transaction for which the broker is providing brokerage services.
(21) Failure by a broker to ensure all persons performing real estate licensed activities under the broker are properly licensed.
(22) An associate shall not perform licensed activities outside their broker's supervision.
(23) Failing to maintain documents relating to a trust account or real estate transaction for the time period as required by Rule 605:10-13-1.

[OAR Docket #19-686; filed 6-27-19]

TITLE 752. UNIVERSITY HOSPITALS AUTHORITY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #19-680]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
752:1-1-1. Purpose and scope [AMENDED]
752:1-1-2. Definitions [AMENDED]
752:1-1-5. Organization [AMENDED]
752:1-1-6. Location for information and for filing [AMENDED]
752:1-1-7. Records [AMENDED]
752:1-1-8. Forms and instructions [REVOKED]
Subchapter 3. General Operations of the University Hospitals
752:1-3-1. Official office [REVOKED]
752:1-3-2. Meetings of the Authority [AMENDED]
752:1-3-3. Executive sessions [REVOKED]
752:1-3-4. Notice of meeting [REVOKED]
752:1-3-5. Agenda items [REVOKED]
Subchapter 5. Administrative Rules
752:1-5-2. Requests for declaratory rulings [REVOKED]
Subchapter 7. Formal and Informal Procedures
752:1-7-1. Purpose [AMENDED]
752:1-7-3. Complaints [REVOKED]
752:1-7-4. Representation [REVOKED]
AUTHORITY:
University Hospitals Authority Act; 63 O.S. § 3208(B)(1)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019, through March 18, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 25, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 27, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 18, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The University Hospitals Authority has conducted a substantial update to its rules to better reflect current information and practices, including purchasing and construction procedures. The Authority no longer operates the hospitals, so rules related to actual operation of the hospitals are being revoked.
CONTACT PERSON:
Randy Dowell, Chief Executive Officer, (405) 271-4962 or randy-dowell@ouhsc.edu

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 18, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

752:1-1-1. Purpose and scope

The purpose of this Chapter is to establish policies, procedures and standards that apply to the University Hospitals Authority and to other Chapters in this Title. The rules in this Chapter describe:

(1) The organization of ~~The~~the University Hospitals Authority

(2) How to get information and file documents; and

(3) The general practices of ~~The~~ the University Hospitals Authority.

752:1-1-2. Definitions

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

"Authority" means the University Hospitals Authority~~which is the governing body of the University Hospitals~~.

"Chief Executive Officer" or **"CEO"** means the ~~highest ranking~~highest-ranking administrator at ~~The~~ the University Hospitals Authority.

~~**"The University Hospitals"** or **"TUH"** means the entity governed by the Authority which operates University Hospital, The Children's Hospital of Oklahoma, The Child Study Center, and The O'Donoghue Rehabilitation Institute.~~

752:1-1-5. Organization

The Authority is ~~the governing body of TUH. The Authority appoints a CEO who is the highest ranking administrator at TUH. TUH operates University Hospital, The Children's Hospital of Oklahoma, The Child Study Center, and The O'Donoghue Rehabilitation Institute.~~ *an agency of the State of Oklahoma, a body corporate and politic, with powers of government and with the authority to exercise the rights, privileges and functions as specified in the University Hospitals Authority Act*. The Authority consists of six members as follows: one (1) appointed by the Governor, with the advice and consent of the Senate; one (1) appointed by the President Pro Tempore of the Senate; one (1) appointed by the Speaker of the House of Representatives; the Director for Human Services or the director of the successor organization responsible for Medicaid (now the Oklahoma Health Care Authority), or his or her designee; the Provost of the University of Oklahoma Health Sciences Center; and the Chief Executive Officer of the University Hospitals Authority, who shall be an ex officio, nonvoting member. [63 O.S. § 3207.]

752:1-1-6. Location for information and for filing

(a) Unless otherwise specified in this Title, the address and telephone number for communications with the Authority ~~TUH~~ is as follows: ~~The University Hospitals Executive Offices, 800~~ 940 N.E. 13th Street, Suite 6900, P. O. Box 26307, Oklahoma City, Oklahoma 73126, Telephone (405) 271-6726~~5911~~.

(b) The normal business hours of ~~TUH~~the Authority are 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

(c) Unless otherwise provided in this Title, anyone may file a document with ~~TUH~~the Authority by mail or~~ hand-delivered~~hand-delivery during normal business hours. The "filing date" is the date ~~TUH~~the Authority receives a document by mail or hand-delivery, not the date it is mailed or postmarked. ~~TUH does not accept facsimiles or "FAXs" instead of original official documents.~~

~~(d) Unless a document clearly states otherwise, the signature of a person on a document filed with TUH shall mean the person has read it and has personal knowledge of the information it contains, that every statement is true, that no statements are misleading; and that filing the document is not a delay tactic. If any document is not signed or is signed with intent to defeat the purposes of the rules in this Title, the CEO may ignore it and continue as though it had not been filed.~~

752:1-1-7. Records

(a) ~~**Records retention and disposition.** TUH~~ The Authority keeps documents for at least the minimum time required by state and federal laws that pertain to archives and records. This varies depending on the type of document. ~~TUH~~The Authority has its records disposition schedules available for inspection.

~~(b) **Removal of documents.** Before the effective date of a document, the CEO or his/her designee may approve a written request from a person, an agency, or party that has filed the document to revise, replace, or withdraw it. After the effective date of a document, the CEO or designee may allow it to be removed on the order of a court or administrative agency with jurisdiction over the controversy before it.~~

(~~c~~b) ~~**Confidential and open records.**~~ The Authority follows the Oklahoma Open Records Act and other relevant laws governing confidentiality.

~~(1) Many records in TUH are available for public inspection and release, but some are not. The records that are not available for general public access may include records described as confidential in this Section or in other Chapters in this Title, and other records that laws require or permit TUH to keep confidential. The CEO normally~~

~~keeps the following records confidential but may choose, in some cases, to make them public if law permits it.~~

~~(A) State employees' home addresses, home telephone numbers and social security numbers;~~

~~(B) Records which *relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation* [51:24A.7(A)(1)];~~

~~(C) Employee evaluations, payroll deductions, employment applications not resulting in a person being hired by the state, and other records that would result in a clearly unwarranted invasion of personal privacy if they were disclosed [51:24A.7(A)(2)];~~

~~(D) Before taking action, personal notes and personally created materials (other than TUH's budget request) prepared by TUH staff as an aid to memory [51:24A.9];~~

~~(E) Before taking action, research material leading to the adoption of a policy or the implementation of a project [51:24A.9];~~

~~(F) Records coming into the possession of TUH *from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law* [51:24A.13];~~

~~(G) Documents, such as medical records and records protected by the attorney-client privilege, that are exempt from the Oklahoma Open Records Act or are specifically required or permitted by law to be kept confidential; and~~

~~(H) *Any information submitted to or compiled by the Authority with respect to the marketing plans, financial statements, trade secrets, research concepts, methods or products, or any other proprietary information of persons, firms, associations, partnerships, agencies, corporations, institutions of higher education, nonprofit research institutions or other entities shall be confidential, except to the extent that the person or entity which provided such information or which is the subject of such information consents to disclosure.* [63:3207(1)]~~

~~(2) All records that are not confidential are open for public inspection and copying. Examples of open records include:~~

~~(A) Employment applications that result in persons becoming state officials or employees [51:24A.7(B)(1); 51:24A.3(4)];~~

~~(B) Gross receipts of public funds [51:24A.7(B)(3)];~~

~~(C) Dates of an individual's employment with the state and his or her job title [51:24A.7(b)(3)]; and~~

~~(D) Any final disciplinary action resulting in loss of pay, suspension, demotion of position or discharge [51:24A.7(B)(4)].~~

~~(d) **Inspection and release of records.**~~

~~(1) People may inspect and copy records during TUH's regular business hours according to TUH's procedures. The procedures protect the integrity and organization of the records and prevent excessive disruption of TUH's essential functions [51:24A.5(5)].~~

~~(2) The CEO may give officers and employees of the state or federal government acting in their official capacities access to confidential records, when such disclosure is authorized by law.~~

~~(3) Each person shall have access to his or her own records in TUH unless it is against the law [51:24A.7(C)].~~

~~(e) TUH staff shall only charge fees that are consistent with Section 24A.5 of Title 51 of the Oklahoma statutes.~~

752:1-1-8. Forms and instructions [REVOKED]

~~Other Chapters in this Title contain references to forms and instructions TUH requires. People may contact TUH to request blank forms and general information about completing and submitting them.~~

SUBCHAPTER 3. GENERAL OPERATIONS OF THE UNIVERSITY HOSPITALS

752:1-3-1. Official office [REVOKED]

~~The Office of the Authority as well as TUH, is 800 N.E. 13th Street, Oklahoma City, Oklahoma 73104. The telephone number is 271-5911. The office hours are from 8:30 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.~~

752:1-3-2. Meetings of the Authority

The Authority follows the Oklahoma Open Meetings Act.~~The Authority shall file a schedule of regular meetings for the succeeding year with the Oklahoma Secretary of State by December 15th of each year. Special meetings may be called from time to time by the Chairman of the Authority, or the Vice-Chairman in his or her absence, with the required notice specified in the Oklahoma Meetings Act.~~

752:1-3-3. Executive sessions [REVOKED]

~~The Authority may hold executive sessions at such meetings as is permitted by the Oklahoma Open Meeting Act, and for the purpose of discussing material which may be kept confidential pursuant to §3207 (1) of Title 63.~~

752:1-3-4. Notice of meeting [REVOKED]

~~Notice of regular and special meetings will be given in accordance with the provisions of the Oklahoma Meeting Act, supra.~~

752:1-3-5. Agenda items [REVOKED]

~~The CEO prepares an agenda on behalf of the Authority for each meeting of the Authority. The agenda is field and posted in accordance with the Oklahoma Open Meetings Act.~~

~~Members of the public may request the Authority to place matters on the agenda for a meeting, and the CEO may use his or her discretion in placing such matters on the agenda.~~

SUBCHAPTER 5. ADMINISTRATIVE RULES

752:1-5-2. Requests for declaratory rulings [REVOKED]

~~(a) Any interested person or entity may petition the Authority for a declaratory ruling as to the applicability of any rule of the Authority.~~

~~(b) The petition must identify the rule questioned, the date on which such rule became effective, and shall summarize the contents of the rule. The petition shall contain a brief statement of the issue or issues raised by the rule which cause such a request to be made, and a statement of the petitioner's personal interest in the ruling of the Authority and how a ruling of the Authority would affect those interests.~~

~~(c) Upon receipt of the petition for declaratory ruling the Authority shall consider the petition and within a reasonable time following receipt thereof, either deny the petition in writing, stating its reasons for denial, or issue a declaratory ruling on the matter(s) contained in the petition.~~

SUBCHAPTER 7. FORMAL AND INFORMAL PROCEDURES

752:1-7-1. Purpose

The rules in this Subchapter describe general formal and informal procedures ~~TUH~~the Authority uses to take action and make decisions. ~~Other Chapters in this Title describe informal procedures that apply specifically to individual programs under the TUH's authority.~~

752:1-7-3. Complaints [REVOKED]

~~(a) Anyone may complain to the CEO about any matter under the CEO's authority. A complaint shall be in writing, and it shall include the following information.~~

~~(1) The name, address and telephone number of the person making the complaint;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person filing the complaint;~~

~~(4) A brief, clear description of each charge, problem or issue that is the basis for the complaint including names, dates, places and actions;~~

~~(5) The numbers and headings of the laws and rules that may apply;~~

~~(6) The remedy, if any, the person making the complaint seeks;~~

~~(7) The signature of the person making the complaint; and~~

~~(8) The date.~~

~~(b) If the complaint is repetitive, concerns a matter that has already been resolved, or a matter outside the CEO's authority, the CEO may reject the complaint.~~

~~(c) The CEO may provide others with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response must contain all of the following information.~~

~~(1) The name, address and telephone number of the person responding;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person responding~~

~~(4) A specific admission, denial or explanation of each charge;~~

~~(5) A brief, clear description of the facts including names, dates, places and actions;~~

~~(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;~~

~~(7) The numbers and headings of the laws and rules that may apply;~~

~~(8) The signature of the person responding; and~~

~~(9) The date.~~

~~(d) The CEO may refer complaints to informal procedures, such as telephone calls, letters, meetings, mediation, investigations or other appropriate procedures.~~

~~(e) The CEO shall make a decision about a complaint within 60 days after its receipt, unless the CEO needs more time. In that case, TUH shall notify the person filing the complaint and persons filing any responses to the complaint.~~

752:1-7-4. Representation [REVOKED]

~~In any administrative review or appeal authorized by this Title, any party has the right to have an attorney who is a member of the Oklahoma Bar Association. The attorney shall act for and bind the party he or she represents. After a party names an attorney, TUH shall communicate with the attorney and not with the party. It shall be the responsibility of the party's attorney to communicate with the party.~~

[OAR Docket #19-680; filed 6-26-19]

TITLE 752. UNIVERSITY HOSPITALS AUTHORITY
CHAPTER 10. PURCHASING RULES [REVOKED]

[OAR Docket #19-681]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
752:10-1-1. Purpose [REVOKED]
752:10-1-2. Definitions [REVOKED]
752:10-1-3. General purchasing provisions [REVOKED]
752:10-1-4. Vendor registration [REVOKED]
752:10-1-5. Vendor retention and removal from bidders list [REVOKED]
752:10-1-6. Vendor samples [REVOKED]

752:10-1-7. Submission of bids [REVOKED]
752:10-1-8. Bid openings [REVOKED]
752:10-1-9. Bid tabulations [REVOKED]
752:10-1-10. Award of bid [REVOKED]
752:10-1-11. Terms and conditions for acceptable bids [REVOKED]
752:10-1-12. Challenge of award [REVOKED]
752:10-1-13. Administrative review [REVOKED]
752:10-1-14. Group purchasing acquisition [REVOKED]
752:10-1-15. Sole source contracts [REVOKED]
752:10-1-16. Emergency acquisition process [REVOKED]
752:10-1-17. Delegation of authority [REVOKED]
752:10-1-18. Authority order [REVOKED]
752:10-1-19. Purchases in excess of $2,500 and not exceeding $10,000 [REVOKED]
752:10-1-20. Professional service contracts [REVOKED]

AUTHORITY:
University Hospitals Authority Act; 63 O.S. § 3208(B)(1)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019

COMMENT PERIOD:
February 15, 2019, through March 18, 2019

PUBLIC HEARING:
March 19, 2019

ADOPTION:
March 25, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 27, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019, by HJR 1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 18, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The University Hospitals Authority has conducted a substantial update to its rules to better reflect current information and practices, including with respect to purchasing and construction procedures. Rules reflecting outdated practices are being revoked.

CONTACT PERSON:
Randy Dowell, Chief Executive Officer, (405) 271-4962 or randy-dowell@ouhsc.edu

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 18, 2019:

752:10-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to describe the rules governing the purchasing requirements of The University Hospitals and the operation of the Purchasing Department. The Purchasing Department is an internal department of The University Hospitals. It provides the mechanism for the acquisition of goods and services for the operation of The University Hospitals. Goods and services are purchased under guidelines approved by The University Hospitals Authority and in compliance with all applicable state statutes.~~

752:10-1-2. Definitions [REVOKED]

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

~~**"Acquisition"** means all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which The University Hospitals obtains for its use any materials, supplies, service or equipment.~~

~~**"Authority"** means the University Hospitals Authority which is the governing body of the University Hospitals.~~

~~**"Award"** means when the Authority, Chief Executive Officer, department, the Purchasing Director, or other person authorized to make the acquisition, agree on a suitable vendor for a competitive bid and the Purchasing Director, or designee, notifies the successful vendor.~~

~~**"Chief Executive Officer"** or **"CEO"** means the highest ranking administrator at The University Hospitals.~~

~~**"Commodity code"** means a group of like products or services.~~

~~**"Department"** means a department within The University Hospitals.~~

~~**"EEOC"** means Equal Employment Opportunity Commission.~~

~~**"Equipment"** means all personal property acquired for TUH use which is in the nature of a tool, device, or machine and shall be deemed to include all personal property used or consumed by The University Hospitals and is not included within the category of materials and supplies.~~

~~**"Goods"** means products, material, supplies and includes all property except real property acquired by The University Hospitals for its use or consumption, except equipment.~~

~~**"Invitation to Bid"** or **"ITB"** means a document issued which describes the goods or services for which offers are being solicited.~~

~~**"Professional services"** means services which are predominantly advisory or intellectual in character, or involve support rather than supplying equipment, supplies or other merchandise. Professional services include those services requiring special, usually advanced education or skill.~~

~~**"Purchasing"** means the Purchasing Department of The University Hospitals.~~

~~**"Purchasing Director"** means the Purchasing Director of The University Hospitals.~~

~~**"Services"** means labor rendered by a person to another as distinguished from providing tangible goods. It shall include any type of personal or professional service, employment or undertaking except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly used.~~

~~**"TUH"** means The University Hospitals.~~

~~**"University Hospitals"** means the entity governed by the authority which operates University Hospital, the Children's Hospital of Oklahoma, the Child Study Center, and the O'Donoghue Rehabilitation Institute.~~

752:10-1-3. General purchasing provisions [REVOKED]

~~(a) The University Hospitals has the statutory authority to directly purchase or acquire:~~

~~(1) Human organs;~~

~~(2) internal prosthesis;~~

~~(3) Emergency repairs of equipment and machinery;~~

~~(4) Products and Services;~~

~~(5) Utility services regulated by a city ordinance, or state or federal regulatory commission.~~

~~(b) Goods and services shall be acquired by one of the following methods and in accordance with the statutes of the State of Oklahoma:~~

~~(1) Direct purchase order for products and/or services to the vendor within the authorized dollar amounts and other limitations contained in this Chapter.~~

~~(2) Acquisition of products and/or services through organized buying groups such as General Services Administration contracts, state-wide Department of Central Services contracts ("00 contracts"), or the University Hospital Consortium.~~

~~(3) Competitive bid of products and services by TUH.~~

~~(4) Competitive bid of products or services by the State Department of Central Services.~~

~~(5) Sole source acquisitions according to the procedure in 752:10-1-15.~~

~~(6) Donation to The University Hospitals.~~

~~(7) Purchases from other governmental agencies.~~

~~(c) The goods and services shall meet the specifications required, be cost effective, and be the best product for the best price.~~

~~(d) Except for acquisitions requiring the approval of the Authority or the CEO, TUH Purchasing, in consultation with the requesting department, shall determine the best product or service for the best price, and shall document that determination.~~

~~(e) All change orders and amendments to any contract shall be initiated by the requesting TUH department, but must be approved by the Purchasing Director.~~

752:10-1-4. Vendor registration [REVOKED]

~~(a) Any vendor wishing to do business with TUH should be on the hospital's vendors bidders list maintained by the hospital's Purchasing Department. Any vendor who wants to be on the bidders list must register with Purchasing to receive copies of bids for the commodities or services which the vendor wishes to sell. All vendors are eligible for consideration.~~

~~(b) Vendors wishing to be added to the bidders list should write, fax, or visit Purchasing and ask for a vendor registration packet. The packet contains an application, forms that request information about the company and services and products or groups of like items that the vendor is interested in providing.~~

~~(c) The vendor shall complete the information requested in the packet and return the information to Purchasing. Upon receipt, Purchasing will review the registration for completeness. Purchasing may return the registration form for additional information if necessary.~~

~~(d) Upon the receipt of a completed registration packet, Purchasing will ascertain what classification(s) the vendor has identified an interest in supplying and will provide to the vendor an itemized listing of products and commodity codes for the vendor. The vendor will complete the listing and return it to Purchasing.~~

~~(e) Upon receipt of the completed itemized listing of products and commodity codes, the information will be encoded into Purchasing's data system. As a service to the vendor, the vendor will be mailed copies of the ITB for those products and commodity codes for which the vendor is registered.~~

~~(f) It is the vendor's responsibility to review the ITB's on file at Purchasing. Purchasing will not be responsible for any ITB's the vendor did not receive via mail or for delays in the receipt of bids.~~

~~(g) It is the responsibility of the vendor to update their file on an ongoing basis. Purchasing will retain all vendor information on file for three years.~~

752:10-1-5. Vendor retention and removal from bidders list [REVOKED]

~~(a) To ensure that vendors will perform in the best interest of TUH, it is necessary to address problems in a swift and equitable manner for all concerned. In addition, varying degrees of vendor misconduct can cause irreparable harm to TUH and its departments. It is therefore recognized that penalties for poor vendor performance and/or violation of state statutes must be addressed.~~

~~(b) Removal from the bidder's list may be considered for the following infractions:~~

~~(1) Three consecutive no responses on each class of item on the invitation to bid. (A bid submitted and marked NO BID is a response).~~

~~(2) Repeated failure on the part of the vendor to meet promised and/or required delivery dates and prices.~~

~~(3) Delivery by the vendor of substitutes in lieu of the items(s) specified on the approved bid and/or purchase order.~~

~~(4) Failure on the part of the vendor to meet EEOC and other requirements mandated by public legislation or The University Hospitals Authority.~~

~~(5) Problems created by the vendor regarding incorrect or inappropriate billing adjustment for goods and/or services furnished.~~

~~(6) Failure to support purchased products by not supplying necessary information, required maintenance and/or parts.~~

~~(7) A conviction or plea of guilt to a felony involving fraud, bribery, corruption or sales to the state or to any of its political subdivisions.~~

~~(c) If the Purchasing Director believes that a vendor has committed any act constituting grounds for removal from the bid list, he shall promptly notify the bidder in writing of a date and time to appear and show cause why the vendor should not be removed from the list. The notice shall state the allegations or facts which serve as the basis for such removal. The Director shall select a date not less than seven (7) days from the date the notice is mailed, at which time the vendor may appear or provide a written response to rebut the allegations. The Director may extend this date for good cause. After the vendor~~

~~has been given the opportunity to respond, the Director shall either decide that grounds do not exist for removal, or shall decide to remove the vendor from the bidder's list. The Director may, in his or her discretion, remove a vendor from the bidder's list for up to three (3) years, depending on the severity of the vendor's conduct. If the grounds for removal are for a felony or other conviction under (b)(7) of this Section, the removal shall be for an indefinite duration. Appeals from decisions of the Director shall be done in the same manner as established in §752:10-1-13(d). Any vendor may petition the Director for reinstatement. Such a vendor has the burden of demonstrating that it has the capability to responsibly do business with the state, and that the conditions leading to its removal have been remedied. In the case of removals based on criminal convictions, a vendor may only be placed back on the bidder's list if it can show the vendor has disassociated itself from the individuals responsible for the acts giving rise to the conviction.~~

752:10-1-6. Vendor samples [REVOKED]

~~(a) Vendors who provide samples for evaluation will be accepted if they meet the following conditions:~~

~~(1) The product is one which is of a type presently in use or is of potential use to the hospital. Samples of goods not likely to be purchased will not be accepted.~~

~~(2) The quantity or size of the sample is relatively small and of low value. The object of a sample is the examination of its fitness for hospital use.~~

~~(3) If vendor supplied samples are accepted, they shall be promptly conveyed to the department for evaluation.~~

~~(4) If a vendor sample is an item of equipment, the item must be inspected and approved by TUH Biomedical Services prior to the delivery to the area requesting the sample.~~

~~(5) Any manufacture warranty and liability will be in effect for any product samples being evaluated by the hospitals.~~

~~(6) The vendor may follow up with the appropriate buyer on any sample left for evaluation.~~

~~(7) Under no circumstances will TUH purchase products for the purpose of evaluation.~~

~~(b) Samples not destroyed by examination and testing or retained for comparison will be returned at cost to the vendor upon written request.~~

752:10-1-7. Submission of bids [REVOKED]

~~(a) If a vendor wishes to bid on the item(s) listed in an ITB, the vendor shall complete the bid via the instructions provided with the ITB. It is the vendor's responsibility to read and understand the instructions and terms and conditions provided with the invitation to bid. Failure to comply with the instructions and terms and conditions in the ITB may disqualify the bid as per §752:10-1-11. Any questions should be directed to the TUH Purchasing buyer listed on the bid.~~

~~(b) If the vendor does not wish to bid on the items, the vendor should fill in the vendor name, address, and write "No Bid" in the unit price column and return the bid to Purchasing.~~

~~(c) It is the responsibility of the vendor to ensure delivery of a bid to Purchasing at or prior to the designated time on the ITB. The hospital will not be responsible for late bids.~~

752:10-1-8. Bid openings [REVOKED]

~~(a) All sealed bids will be stamped with the time and date upon receipt at Purchasing. The bids will be placed in a secured bid file until time for the scheduled bid opening. Access to the file is limited to the Purchasing Director or designee until the bid opening.~~

~~(b) Bids will be opened at the designated date and time of closing by TUH purchasing personnel. A bid opening record will be completed and maintained in the bid file.~~

~~(c) Public openings may be requested by a vendor and/or interested parties prior to the bid opening. The request may be oral or written and must include the requisition number and closing date.~~

~~(d) No award will be made at routine or public openings. Award recommendations are made in writing upon conclusion of the bid evaluation.~~

~~(e) All bids and bid records are open to the public during normal working hours, after the bid opening, and in accordance with 51 O.S. 1991, Sections 24A.1 et seq., as amended. Copies may be requested in writing from the Purchasing Director.~~

752:10-1-9. Bid tabulations [REVOKED]

~~(a) After the bid opening, the TUH purchasing personnel will utilize a spread sheet referred to as the "bid tabulation sheet". A bid tabulation sheet will be completed for each ITB. The vendor's bid will be reviewed for compliance with the instructions, compliance with the terms and conditions, and for compliance with the bid as per §752:10-1-10 and 10-1-11.~~

~~(b) The bid tabulation sheet will be provided to the hospital's department requesting the ITB for their evaluation.~~

752:10-1-10. Award of bid [REVOKED]

~~(a) The ITB, the bid tabulation sheet, and the literature and/or samples provided by the vendor will be forwarded to the requisitioning department. The department will review the information to determine compliance with the bid specifications. The department will make a written recommendation of award based on the information provided. The recommendation will be reviewed by Purchasing to ensure compliance with all TUH rules, policies and procedures.~~

~~(b) Purchasing has the right to waive minor deficiencies or informalities in a bid provided that, in the buyer's judgement, the best interest of the state would be served without prejudice to the rights of the other bidders.~~

~~(c) Tie bids may develop between bidders. If these bidders are equal in price and all specifications, the award will be determined as follows:~~

~~(1) A tie between out-of-state and Oklahoma firms will automatically go to the Oklahoma firm.~~

~~(2) A tie between Oklahoma firms will be made as deemed in the best interest of the State using the criteria in (d) of this Section.~~

~~(d) Lowest and best bid will be determined by applying the following criteria:~~

~~(1) The bid that most closely matches the specification set forth by the utilizing department.~~

~~(2) The administrative costs of Purchasing often vary when the bids are partial or by lot. Administrative costs shall include direct personnel and other tangible costs associated with processing purchase orders and payments to the vendor. These administrative costs may be considered when determining whether to make partial awards on a single bid. Prompt payment discounts will be accepted but will not be considered in the determination of lowest price.~~

~~(3) Where earlier delivery date would be of great benefit to the hospital, this may be considered in the bid award, when so specified in the ITB.~~

~~(4) Where the vendor has a particular expertise or recognized ability to provide certain services, or has provided exemplary performance on previous contracts, this will be a consideration in the award.~~

~~(e) A differential of up to 5% will be allowed in the cost of Oklahoma produced materials, supplies and provisions of equal quality, if the preference is claimed at the time of the bid. An article shall be considered to be produced, manufactured or grown within this State if done so by any person, partnership, company association, or corporation that meets the requirements as set forth in 74 O.S. 1991, Section 85.32 et seq.~~

~~(f) A differential of up to 5% will be allowed in the cost to a certified minority business (if noted on the invitation to bid) which means any business that is properly certified as a minority business enterprise through the Minority Business Assistance Program as provided in 74 O.S. 1991, Sections 85.45 et seq.~~

~~(g) Oklahoma is an energy conservation state and as such will reserve the right to give considerations to energy efficiency and total use cost (life cycle costing) in all awards.~~

~~(h) TUH reserves the right to accept by item, group of items, or by the total bid, whichever is deemed to be in the best interest of TUH.~~

~~(i) TUH reserves the right to reject in part or whole any bid.~~

~~(j) No award will be made if TUH determines the lowest bid totals more than the money available for purchase or if the lowest bid exceeds the reasonable market price.~~

~~(k) TUH will send a purchase order or a notice of award as acceptable notification of a valid and binding contract with a vendor.~~

~~(l) All awards will be made under the terms and conditions as outlined in §752:10-1-11 and any additional terms and conditions as described in the invitation to bid.~~

~~(m) The ITB together with the successful vendor's responsive bid shall constitute a binding contract and will be interpreted under Oklahoma law.~~

752:10-1-11. Terms and conditions for acceptable bids [REVOKED]

~~(a) All bids submitted are subject to TUH policy and procedure and/or any special conditions and specifications listed in this Subchapter, all of which are made a part of the ITB.~~

~~(b) Sealed bids will be opened by Purchasing at the time and date shown.~~

~~(c) Bids received after the closing time will not be considered. Envelopes must contain only one bid, be sealed and the name and address of the bidder inserted in the upper left hand corner. The requisition number and closing date must appear on the face of the envelope.~~

~~(d) The bid shall be in strict conformity with the instructions to the bidders and shall be submitted on the approved form. The quotations must be typewritten or written in ink, and corrections must be initialed by a representative of the vendor prior to the submission of the bid. Corrections made by correction fluid or by correctable typewriter ribbons will not be accepted unless initialed. Penciled bids will not be accepted.~~

~~(e) The bid may be awarded on an all or none basis, by item or groups of items, whichever is in the best interest of TUH. Awards will be made to the lowest and best bidder as described in §752:10-1-10(d).~~

~~(f) All bidders must guarantee that the quoted unit price in a bid is correct.~~

~~(g) Purchases by TUH are not subject to any sales tax or federal excise tax. Exemption certificates will be furnished upon request.~~

~~(h) Prices shall be bid F.O.B. TUH and include packaging, handling, shipping, and delivery charges prepaid by the bidder.~~

~~(i) The bidder shall deliver the merchandise or services as bid. Any deviation must be approved in writing with the TUH Purchasing Buyer.~~

~~(j) If a vendor wishes to claim the in state preference referred to in 752:10-1-10(e), the vendor must place an asterisk (*) by each item so claimed and identify where it is produced, grown, or manufactured in Oklahoma. The proof of qualification rests with the bidder. If a preference is claimed under the Minority Business Assistance Program, the bidder shall so state and provide their certification number.~~

~~(k) Any questions pertaining to the clarification of the bid shall be directed to the Buyer shown on the ITB.~~

~~(l) Oklahoma is an energy conservation state and welcomes any comments on the bid that would indicate energy savings.~~

~~(m) Any manufacturer, trade names, brand names, information and/or catalog numbers listed in the specification are for information and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item(s). If the bid is based on equivalent products, the bidder shall indicate on the bid form the manufacturer's name and number. The alternate bid shall be accompanied with sketches, descriptive literature, and/or complete specifications. Samples of the alternate item(s) are recommended. Reference to literature submitted with a previous bid will not satisfy this provision. If necessary, the bidder shall also explain in detail the reason(s) why the proposed requirements may be satisfied with a substitute product. Bids lacking any written indication of intent to quote an alternate brand will be received and considered in complete compliance with the specifications as listed on the bid form.~~

~~(n) A bid constitutes a legal offer which becomes a contract upon acceptance by TUH pursuant to §752:10-1-10(m).~~

~~(o) The ITB must be made out in the name of the bidder and must be fully and properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions.~~

~~(p) In accepting a contract with TUH, the bidder must agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the bidder relevant to the contract are subject to examination by TUH, and the State Auditor and Inspector.~~

~~(q) Failure to comply with the terms and conditions will subject the bid to disqualification.~~

752:10-1-12. Challenge of award [REVOKED]

~~(a) Any bidder may challenge the award of a bid. A challenge may be based on the following grounds:~~

~~(1) Error in the calculation of price.~~

~~(2) The bid of the successful vendor did not meet the bid specifications in a material way.~~

~~(3) The bidding procedure was done in violation of University Hospitals Authority rules; or~~

~~(4) University Hospitals personnel handling the bidding procedure acted in a willful or capricious manner.~~

~~(b) After the award is made, the protesting bidder will deliver a written explanation of the reason for the challenge to the office of the Purchasing Director, within five (5) working days of the time the hospital selects a successful bidder.~~

~~(c) The Purchasing Director will review the protesting bidder's challenge of award, as well as the hospital's selection process, and rule on the challenge. The decision will be in writing and shall address each ground raised by the bidder challenging the bid, specifically referring to the facts and documents supporting his decision.~~

~~(d) Any bidder may also request that the Purchasing Director delay the implementation of the contract being protested pending the outcome of the protest. This request must also be in writing and the decision to delay implementation of a contract shall be left to the discretion of the Purchasing Director.~~

752:10-1-13. Administrative review [REVOKED]

~~(a) If the protesting bidder does not agree with the Purchasing Director's decision on the challenge of award, the protesting bidder may request an administrative review. Any protesting bidder may appeal a decision by the Purchasing Director to the CEO. In order for the claim to be eligible for administrative review, the appeal must have been through the challenge of award process as per §752:10-1-12.~~

~~(b) The protesting bidder must file a notice of appeal with the CEO within seven (7) working days of the date of the letter notifying the bidder of the decision by the Purchasing Director of the challenge of award by the protesting bidder, or the postmark of such letter, whichever is later. The letter shall contain the following:~~

~~(1) The letter must state all the facts and arguments giving rise to the claim of controversy and the appeal.~~

~~(2) The letter must also state clearly and separately the alleged error by the Purchasing Director or other University Hospitals personnel and the relief sought with the appeal to the CEO.~~

~~(3) The letter must clearly and separately state that the vendor is requesting an opportunity to be heard in pursuit of the appeal.~~

~~(c) Upon receipt of a properly perfected notice of appeal, the CEO shall review the appeal himself or appoint a designee to conduct the administrative review. The CEO may appoint any officer of TUH or may appoint an attorney licensed to practice law to conduct the review. The person conducting the review shall promptly set a time period in which a review will be conducted that will be not more than forty-five (45) days in length beginning from the date the notice is filed. The person conducting the administrative review will set a date in which the vendor must produce or identify all the documents or other supporting data (verbal or written) which supports his appeal, which date must be within the forty-five (45) day time period above. The person conducting the administrative review may schedule a meeting with the vendor to discuss the appeal and issues raised, and will examine all such documents and supporting data.~~

~~(d) Within twenty (20) working days after the administrative review period, the person conducting the administrative review shall notify the protesting bidder and the apparent successful bidder of the decision by certified mail. The decision by the person conducting the administrative review shall include findings of the facts and conclusions supporting the decision to uphold the award or set the award aside. This decision shall be final and conclusive.~~

752:10-1-14. Group purchasing acquisition [REVOKED]

~~(a) TUH may use organized buying groups as reviewed by the CEO and the Purchasing Director and approved by the Authority, for the acquisition of products and services. The organized buying group shall have written policies and procedures which describe their bidding and acquisition process. The products shall be of a sufficient quality, competitively priced, and meet the standards as set forth by the Authority.~~

~~(b) Some organized buying groups may require "precommitment documents" prior to issuing contracts. A precommitment document is a document which states that TUH will purchase a specific minimum number of the type of product to be purchased. All precommitment documents shall be reviewed by the affected departments and by the Purchasing Director to ensure that the terms and conditions of the contract are in the best interest of the hospital. After review by the department manager and the Purchasing Director, the documents will go to the CEO for his review and approval.~~

~~(c) Approved precommitment documents are mailed back to the organized buying group and a copy is maintained in the purchasing department.~~

~~(d) If an acquisition is to be made from a General Services contract or "00 contract" from the State Department of Central Services, the requesting TUH department must document that the acquisition constitutes the lowest and best bid among the~~

~~prices quoted for the goods or pieces of equipment possessing comparable specifications available on the contracts. The acquisition must also be approved by Purchasing.~~

752:10-1-15. Sole source contracts [REVOKED]

~~TUH need not seek competitive bids if the person with authority to make the acquisition affirms that the goods or services may only be obtained from a single or sole source. The person wishing to make an acquisition through a sole source shall sign an affidavit prepared on a form approved by the Purchasing Director, which gives all the reasons why the specifications to fill the need restricts the item or service to one person or business. The affidavit shall be reviewed by the Purchasing Director and approved by the CEO. A sole source acquisition may only be approved if it meets one or more of the following criteria:~~

~~(1) Replacement or repair parts require the same brand.~~

~~(2) Compatibility of equipment from the same vendor is an essential factor for effective utilization of the product.~~

~~(3) The product or item is the only one of its kind that will fulfill the need of the agency.~~

~~(4) The product or service furnished by the vendor is very specialized or the vendor providing the service possesses great acquired expertise, and the vendor is the only one singularly and peculiarly qualified to provide such service or product.~~

752:10-1-16. Emergency acquisition process [REVOKED]

~~(a) TUH has the authority to acquire human organs, internal prosthesis, and the emergency repair of equipment without use of the competitive bidding process pursuant to 74 O.S.1991, Sections 85.7 and 85.12.~~

~~(b) The department manager or designee will complete a purchase requisition with the appropriate justification form stating the reason for the emergency acquisition and forward the paperwork to Purchasing.~~

~~(c) The TUH Purchasing Department buyer will review the requisition and justification forms to ensure all required information is complete. Incomplete forms will be returned to the department for correction.~~

~~(d) The buyer will issue a purchase order to the vendor selected by the department. The buyer will hand carry the purchase order to the Purchasing Director for signature. The buyer will contact the vendor and place the order.~~

752:10-1-17. Delegation of authority [REVOKED]

~~The authority to procure needed products and services for TUH has been delegated to the Authority from the Oklahoma Legislature. The Authority delegates procurement authority to the CEO and other Authority officers and personnel according to the dollar limits and types of products stated in (1), (2) and (3) of this Section. Within this authority, the CEO may delegate in writing to other specific individuals the responsibility for the performance of the procurement duties.~~

~~(1) Supply and Non Professional Services Acquisitions: Each department manager may initiate any supply or non professional services acquisition which is within his or her authorized and approved department budget. Any single acquisition of this kind over $50,000 up to $500,000 must be approved by the CEO. Any single acquisition of this kind over $500,000 must be approved by the Authority.~~

~~(2) Capital Equipment: Acquisitions of capital equipment from $0 up to $250,000.00 must be approved by the CEO. For acquisitions over $250,000, the CEO shall notify the members of the Authority that an ITB is being sent out. An analysis of the submitted bids, and a recommendation of a vendor, shall be presented by the CEO to the Authority, and the Authority shall make the award.~~

~~(3) Professional Service Contracts: Acquisitions of professional services from $0 up to $50,000 must be approved by the CEO except for auditing and legal services, which must be approved by the Authority. All other professional service contracts over $50,000 must be approved by the Authority.~~

752:10-1-18. Authority order [REVOKED]

~~(a) Any acquisition or contract for an amount of $2,500.00 or less shall be exempt from the competitive bidding procedures. The items may be acquired by an authority order issued directly to the vendor.~~

~~(b) Purchasing will monitor authority orders to see if the combined usage from the various departments for the same items exceeds the dollar for authority orders. When this happens, the departments will have to prepare competitive bid specifications.~~

752:10-1-19. Purchases in excess of $2,500 and not exceeding $10,000 [REVOKED]

~~(a) If the acquisition is for an amount exceeding $2,500, but is not more than $10,000, price quotations shall be solicited from three or more vendors. Upon the vendors request, a solicited vendor shall be afforded at least 24 hours in which to prepare and provide a quotation.~~

~~(b) One or more of the solicited vendors shall be a certified minority business if any are registered for the commodity or service to be acquired.~~

~~(c) If a sole brand name or sole vendor is required, a written justification shall be filed for the record.~~

~~(d) The acquisition shall be made from the solicited vendor providing the lowest and best quotation. If the acquisition is not made from the vendor providing the lowest price quotation, a written explanation shall be filed for the record.~~

~~(e) If the goods or services are available from Oklahoma State Industries, they must be acquired through OSI, or a waiver from OSI must be obtained [57 O.S. 1991, Sections 549.1, et seq.].~~

~~(f) If the goods or services being acquired are included in the procurement schedule by the Committee on Purchases of Products of the Severely Handicapped, they must be acquired through that program [74 O.S. 1991, Sections 3001, et seq.].~~

~~(g) If the goods or services are available on a current group purchasing contract, they should be acquired from that contract.~~

~~(h) State manufacturers and certified minority businesses are entitled to certain bid preferences [74 O.S. 1991, Sections 85.32 and 85.45]. For any other preferences which may apply, or for assistance in calculating bid preferences, contact the Central Purchasing Division of the State Department of Central Services.~~

~~(i) The Purchasing Director may request waivers from the State Purchasing Director of certain requirements, if such waivers are permitted and/or mandated by law, and the receipt of such a waiver is in the best interests of TUH.~~

~~(j) All records and documentation shall be made available to the Director of Central Services or his/her designee, and/or to the State Auditor and Inspector, upon request. Further, all purchasing records required to be open under the Open Records Act [51 O.S. 1991, Sections 24A.1 et seq.], shall be available from Purchasing.~~

~~(k) Bids may be solicited by phone or facsimile machine. If the acquisition is for an amount over $2,500.00, the vendor's bid must be in writing and received in a sealed condition. Such bid shall be opened and reviewed after the specific time and date stated or designated by TUH personnel.~~

752:10-1-20. Professional service contracts [REVOKED]

~~(a) Purchasing is the official repository for all original professional service agreements/contracts except as otherwise authorized by the CEO. Departments must forward to Purchasing all original agreements/contracts in their files. A standard format for all agreements will be on file and any changes will be coordinated with Purchasing. Any correspondence affecting the contract must also be forwarded to Purchasing. Purchasing staff will provide copies of documents requested from the files. Purchasing's central file will contain:~~

~~(1) Official copy of the agreement/contract~~
~~(2) Amendments~~
~~(3) Compliance audits or reviews~~
~~(4) Historical vendor performance~~
~~(5) The requisition~~
~~(6) Other related documents~~

~~(b) TUH may not enter into a professional service contract with any person who has been employed by TUH within one year after the termination date of the individual's employment, unless specifically permitted by statute. This shall not apply to contracts with qualified interpreters for the deaf.~~

~~(c) The travel expenses to be incurred by the vendor pursuant to the contract for services shall be included in the total amount of the contract award, unless TUH decides to reimburse the vendor under state statutes for such expenses, and informs vendors of such reimbursement in the ITB or request for proposal. The contractor shall be responsible for all travel arrangements and provide supporting documentation when submitting claims for reimbursement.~~

~~(d) An annual performance evaluation is required of the services provided under a professional service contract. Such evaluations shall assess the performance of the vendor during the contractual period. Evaluations shall be completed by the department responsible for initiating the contract no less than 90 days after the end of the contract. A copy of each evaluation is forwarded to Purchasing for filing in the contract file.~~

~~(e) If the final product of a contract is a report, the vendor must deliver two copies of the report to Purchasing.~~

~~(f) Contract terms and price must be definite and fixed.~~

~~(g) The following professional services are exempt from competitive bidding:~~

~~(1) Physician, Surgeon or doctor of medicine;~~
~~(2) Osteopathic Physician or Surgeon;~~
~~(3) Chiropractor;~~
~~(4) Chiropodist-podiatrist;~~
~~(5) Optometrist;~~
~~(6) Veterinarian;~~
~~(7) Architect;~~
~~(8) Attorney;~~
~~(9) Dentist;~~
~~(10) Public Accountant;~~
~~(11) Psychologist;~~
~~(12) Physical Therapist;~~
~~(13) Registered Nurse;~~
~~(14) Professional Engineer; and~~
~~(15) Land Surveyor.~~

~~(h) All other professional service contracts must be competitively bid pursuant to this Chapter. In preparing bid specifications for professional service contracts, a minimum of 25% of the evaluation must be based on price.~~

~~(i) The requirement for competitive bidding may not be avoided by entering into a contract with an individual licensed in one of the professional categories identified in (g)(1) through (g)(15) of this Section, to perform non-germane services. For example, a lawyer may not be given a contract to serve as an investment counselor without competitive bidding.~~

[OAR Docket #19-681; filed 6-26-19]

TITLE 752. UNIVERSITY HOSPITALS AUTHORITY
CHAPTER 11. ACQUISITIONS AND CONSTRUCTION

[OAR Docket #19-682]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 11. Acquisitions and Construction [NEW]
AUTHORITY:
University Hospitals Authority Act; 63 O.S. § 3208(B)(1)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019, through March 18, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 25, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 27, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 18, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The University Hospitals Authority has conducted a substantial update to its rules to better reflect current information and practices, including with respect to purchasing and construction procedures. The new Chapter 11 addresses updated purchasing and construction procedures.
CONTACT PERSON:
Randy Dowell, Chief Executive Officer, (405) 271-4962 or randy-dowell@ouhsc.edu

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 18, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

752:11-1-1. Purpose

The purpose of this Chapter is to establish the policies and procedures for acquisitions and construction for the Authority.

752:11-1-2. Definitions

The following words or terms shall have the following meaning unless the context clearly indicates otherwise:

"Acquisition" means all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which the Authority obtains for its use any materials, supplies, service, or equipment.

"Alternate bid" or **"Alternate"** means, for purposes of a construction contract, an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

"Architect" means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, 59 O.S. § 46.

"Architectural Design & Construction Team" or **"ADC"** means a team assembled within the Authority that may include an Architect, Project Manager, Superintendent, and/or other applicable member.

"Authority Having Jurisdiction" or **"AHJ"** means the University of Oklahoma employee who works on behalf of the Oklahoma State Fire Marshall, performing all building inspections and code review based on Oklahoma State Fire Marshall guidelines.

"Award" means when the Authority, the Chief Executive Officer, or other person authorized to make the acquisition, agrees on a suitable vendor for a bid and the successful vendor is notified.

"Base bid" means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

"Best value" means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the Authority, which may not be the lowest bidder.

"Bid" means a cost proposal submitted by a vendor in response to a request or solicitation for bids from the Authority.

"Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. Bidder is synonymous with a "supplier" or "vendor" responding to a solicitation.

"Certified Procurement Officer" or **"CPO"** means the Procurement Officer who has been OMES-certified.

"Chief Executive Officer" or **"CEO"** means the highest-ranking administrator of the Authority.

"Chief Financial Officer" or **"CFO"** means the Chief Financial Officer or comparable position who reports to the CEO on matters concerning the budget of the Authority.

"Chief Facilities Management Officer" or **"CFMO"** means the Chief Facilities Management Officer or comparable position who reports to the CEO and manages the day-to-day operations and maintenance of the Authority's facilities.

"Claim" means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

"Code" means the minimum and applicable building code or codes provided by this rule.

"Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, disposing, or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property.

"Construction Management" or **"CM"** means the project delivery method based on an agreement whereby the Authority acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

"Construction Management/At-Risk" means the project delivery method whereby the construction entity takes on the financial obligation to carry out construction under a specified cost agreement.

"Construction Manager" means a person who acts as an agent of the Authority for a construction project; who coordinates and manages the construction process; who is a member of the ADC; and who utilizes skills and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor

conditions; and who provides advice concerning construction, safety, and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost, or as may otherwise be specified in the solicitation issued by the state agency.

"Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.

"Contract" means the solicitation, vendor's response, negotiation document, and/or purchase order verifying an award and encumbering funds.

"Delivery system" means the approach used to develop and construct a project.

"Design-Bid-Build" means the delivery method used on construction projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. the Authority shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

"Emergency condition" means an event or need that was not reasonably foreseeable but that is serious, unexpected, and potentially dangerous, and for which action must be taken before a bid can be prepared or put into action.

"Engineer" means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, of Title 59 of the Oklahoma Statutes.

"Evaluation criteria" means that written criteria necessary to evaluate a supplier's or bidder's response to a solicitation which may include specialized experience, technical competence, capacity to perform, past performance, and other appropriate factors, as and where appropriate.

"Facility" means any building or improvement to real property.

"Fixed fee" means the type of fee which is expressed as a firm, fixed amount, for the services specified in the scope of work.

"FTE" means a full-time equivalent personnel position.

"Guaranteed Maximum Price" or **"GMP"** means the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.

"Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web.

"Interview committee" means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available and when appropriate.

"Invitation to Bid" or **"ITB"** means a type of solicitation in which the Authority or its designee requests suppliers to submit a bid for an acquisition, i.e. suppliers are invited to bid.

"Minimal value" or **"no value"** means surplus property that has less value than the costs that the Authority may incur to sell, trade, or dispose of the property.

"Non-Collusion Certification" means a certification submitted by a supplier with any competitive bid or contract executed by the Authority for goods or services in accordance with 74 O.S. § 85.22.

"Notice to Proceed" means the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

"OMES" means the Office of Management and Enterprise Services.

"Online bidding" means an electronic procurement process in which the Authority receives bids from vendors for goods, services, construction, or information services over the Internet in a real-time, competitive bidding event.

"OSFM" means the Oklahoma State Fire Marshal.

"Past performance rating" means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.

"Percentage fee" means a fee to be paid which is based upon a negotiated percentage of a resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

"Pre-Design services" means a formal planning process to establish function, scope, and cost of a future project.

"Procurement Officer" or **"PO"** means the individual with the authority to make purchases for goods and services on behalf of the Authority, such as the Human Resources and Business Systems Director or comparable position, with such authority and all necessary accompanying documentation clearly marked in the individual's file.

"Program" means the detailed description of the work and the scope of design services.

"Project" means the scope of services for which competitive proposals are requested from interested construction services vendors.

"Project capability" means the ability of a vendor to perform the requested services based on understanding of the requirement and mastery of necessary technical requirements while demonstrating a lack of technical risk as evidenced by measurement or accomplishment.

"Project" or **"Improvement"** means the collective act of design and construction of a new building, facility, or improvement, or the renovation of an existing building, facility, or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy.

"Request for Proposals" or **"RFP"** means a type of solicitation in which the Authority requests submission of proposals from suppliers.

"Request for Quotation" or **"RFQ"** means a simplified written or oral quote that the Authority or its designee requests from suppliers.

"Risk assessment" means identification of risks that the vendor does not control and the vendor's plan to minimize the risk.

"Screening committee" means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available and when appropriate.

"Selection criteria" means a listing of the considerations and requirements used to evaluate each prospective consultant.

"Short list" means a listing of consultants chosen during the screening process for detailed interview. When possible, this list shall contain at least three (3) consultants for a single project. If the process is selecting for more than one consultant contract, there should be two (2) consultants on the short list for every planned project.

"Solicitation" means the formal or informal manner in which the Authority determines the price of an acquisition from various vendors.

"Supplier" means "bidder" as defined in this section.

"Value-added" means adjustment to the project requirement and/or benefit offered to the owner that may be proposed by a vendor, stated in terms of impact to the project in return for a deviation in price, schedule or quality.

"Vendor" means "bidder" as defined in this section.

752:11-1-3. General provisions

(a) Goods and services shall be acquired by one of the following methods:

(1) Acquisition of products and/or services through organized buying groups such as OMES state-wide contracts.

(2) Direct purchase order for products and/or services to the vendor within the authorized dollar amounts and other limitations contained in Subchapter 2 of this Chapter.

(3) Formal or informal competitive solicitation of products and services.

(4) Sole Source acquisitions according to the procedure set forth in Subchapter 2 of this Chapter.

(5) Donation

(b) Goods and services shall meet the specifications required, and awards shall be based on lowest and best or Best Value criteria. Determinations shall be documented as specified in this Chapter.

(c) Professional service contracts for personal services rendered by the following professionals are exempt from competitive bidding. [74 O.S. § 85.7 and 18 O.S. § 803]:

(1) Physician, surgeon or doctor of medicine;
(2) Osteopathic physician or surgeon;
(3) Chiropodist-podiatrist;
(4) Optometrist;
(5) Architect;
(6) Attorney;
(7) Dentist;
(8) Public Accountant;
(9) Psychologist;
(10) Physical Therapist;
(11) Registered Nurse;
(12) Professional Engineer;
(13) Land Surveyor;
(14) Occupational Therapist;
(15) Speech pathologist;
(16) Audiologist;
(17) Registered Pharmacist;
(18) Licensed Perfusionist;
(19) Licensed Professional Counselor;
(20) Licensed Marital and Family Therapist;
(21) Dietitian;
(22) Social Worker;
(23) Licensed Alcohol and Drug Counselor; and
(24) Licensed Behavioral Practitioner.

(d) This list will be automatically amended to include new professional services as amended by the Legislature.

752:11-1-4. Ethics

(a) Employees of the Authority shall be subject to rules promulgated by the Oklahoma Ethics Commission concerning gifts from suppliers.

(b) Unless otherwise provided by law, the Authority shall not enter into a sole source or professional services contract or a contract for the services of any person who has terminated employment with or who has been terminated by the Authority for one (1) year after the termination date of the employee from the Authority. [74 O.S. § 85.42]

752:11-1-5. Online bidding [74 O.S. § 85.45r]

The Authority has determined that electronic or online bidding is often more advantageous than other procurement methods and thus may use online bidding to obtain bids for the purchase of goods, services, construction, and information services, where and as necessary. The Authority does not provide online bidding for bids and proposals that must be let competitively.

SUBCHAPTER 3. PURCHASING

752:11-3-1. Supplier selection and standard requirements

(a) **Vendor bidder list.** Any vendor wishing to do business with the Authority should register on the vendor bidder list maintained by OMES. The Authority may send solicitations or make acquisitions from vendors who are not on the vendor bidder list.

(b) **State use.** The Authority shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the purchase price. [74 O.S. § 85.12(C); 74 O.S. § 3007]

(c) **Statewide contracts.** The Authority may make acquisitions from statewide contracts. 74 O.S. § 85.12(C)]

(d) **Agreements and cooperative ventures.** The Authority may make acquisitions through agreements and cooperative ventures with other health care providers entered into pursuant

to 62 O.S. § 3210(A)(1), the purposes of which are to share services or to provide a benefit to the hospitals.

(e) **Split purchasing.** Acquisitions shall not be made nor orders split for the purpose of evading competitive bidding requirements. [74 O.S. § 85.7(A)(2)]

(f) **Non-Collusion Certification.** A Non-Collusion Certification shall be included with any competitive bids and/or contract submitted to the Authority for goods or services. The Certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions. [74 O.S. § 85.22]

(g) **Taxes.**

(1) Prior to the award of a contract, the Authority shall verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. A copy of a current sales tax permit or confirmation of the permit's status from the Oklahoma Tax Commission must be included in the acquisition file.

(2) The Authority acquisitions are exempt from sales tax and federal excise tax.

(3) Purchases made by suppliers on behalf of the Authority are not exempt from sales or federal taxes.

(h) **Travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. the Authority shall not pay travel expenses not specified by the successful solicitation response. [74 O.S. § 85.40]

(i) **Bonds.** The Authority may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid. The bond, where required, will be retained until successful completion of the purpose for which the bond was drawn. An irrevocable letter of credit may be submitted in lieu of any bond specified.

(j) **Insurance.** A successful bidder shall provide proof of all insurance as and where needed and as required by the solicitation prior to contract award (e.g. workers compensation, general liability, etc.).

(k) **Verification of Registration with the Secretary of State.** Prior to the award of a contract, the Authority will verify that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §§ 1203-04.

752:11-3-2. Acquisitions

(a) Only the CEO, CFO, PO, or State Purchasing Director may issue a purchase order for direct acquisitions. Requests for purchase orders shall describe why the acquisition is needed.

(b) All maintenance/construction related requests shall be reviewed and approved by the CFMO or comparable position before submittal to the CEO, CFO, or PO.

(1) **Acquisitions Not Exceeding $5,000 or Other Limit as Permitted for CPOs.** Acquisitions of $5,000 or less, unless the CPO is permitted to make acquisitions of another higher limit, will be made on the open market using a fair and reasonable acquisition process and is conducted pursuant to this Subchapter.

(2) **Acquisitions Between $5,000 or Other Limit as Permitted for CPOs and $50,000.** Acquisitions between $5,000 or Other Limit as Permitted for CPOs and $50,000 require formal or informal competitive solicitation. Where possible, the Authority may solicit suppliers from the Supplier List maintained by OMES, with selection of suppliers rotated whenever there are more suppliers on the list than the necessary number of solicitations. For bids between $5,000 or Other Limit as Permitted for CPOs and $25,000, the Authority will solicit or otherwise obtain a minimum of three solicitations when possible. For bids between $25,000 and $50,000, the Authority will solicit or otherwise obtain a minimum of five solicitations when possible. If the requisite number of solicitations cannot be made, the CEO shall be informed of the reason why with such information documented in the acquisition file.

(3) **Acquisition above $50,000.** Acquisitions above $50,000 require a formal sealed competitive bidding process as outlined in this Subchapter.

752:11-3-3. Formal or Informal Competitive Solicitations ($5,000 - $50,000)

(a) The Authority shall solicit or otherwise obtain prices and delivery dates by mail, telephone, facsimile, or by electronic commerce and shall prepare written evaluation criteria to be considered in selection of the supplier.

(b) The Authority shall provide the specifications, terms, and conditions for the acquisition to each supplier selected for notification.

(c) All awards shall be based on lowest and best or Best Value criteria (74 O.S. § 85.7(B)). Documentation of prices, delivery dates, and the evaluation shall be placed in the acquisition file.

(d) Based on the complexity of the solicitation, the Authority may require a formal competitive solicitation, up to and including sealed solicitation.

752:11-3-4. Competitive sealed solicitations ($50,000+)

(a) **Solicitations generally.** Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal, or request for quotation. The solicitation shall include, at a minimum:

(1) any information regarding limitations on contact between suppliers and the Authority personnel during the solicitation process;

(2) whether the evaluation method will be lowest and best or Best Value;

(3) specifications or a statement of work;

(4) the closing date and time for acceptance of bids;

(5) the location of bid opening;

(6) general terms and conditions offered by the State Purchasing Director.

(b) **Solicitation Amendment.** If the Authority amends a solicitation, it shall notify each supplier sent the original solicitation of the amendment. In the event of an amendment, the supplier must acknowledge receipt of the amendment (1) in the supplier's bid or quotation for submission prior to the closing date and time, or (2) in an acknowledgment of receipt of the

amendment sent prior to closing date and time if the supplier has already submitted a bid.

(c) **Preparation.** The bidder shall complete and submit all required forms as specified by the solicitation. Any form requiring a bidder's signature shall have an authorized signature, such signature indicating that the supplier has read and understood the information contained within the solicitation. The solicitation shall specify whether the Authority may award the contract (1) to more than one bidder and/or (2) to more than one bidder by item.

(d) **Evaluation.** Evaluation criteria contained in the solicitation shall be used as a scoring tool in considering submitted bids. Any evaluation scoring tool used shall be consistent with the evaluation criteria contained in the solicitation. Evaluation of the bids shall be documented and filed in the acquisition file. Criteria consistent with lowest and best or best value methodology, consistent with the methodology identified in the solicitation, shall be developed prior to receipt of proposals and consistently applied.

752:11-3-5. Bid submission

(a) **Bid locations.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Electronic bids.** Bids submitted in response to a formal or informal competitive solicitation pursuant to this Subchapter may be submitted electronically. Electronic submission of bids, when allowed, must be submitted in such manner that the time and date of submission are electronically linked to the bid and cannot be changed.

(c) **Sealed bids.** Bids submitted in response to competitive sealed solicitations pursuant to this Subchapter, the Authority will clearly mark the receipt date and time on the outside of all bid envelopes or containers. Late bids shall not be considered responsive and shall not be evaluated. Late bids will be returned unopened in a timely manner if the bidder requests the return of the unopened bid.

(d) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids, but an alternate bid cannot materially deviate from the original solicitation specifications. Alternate bids must also be complete bids and shall be clearly marked to identify them as an alternate bid.

(e) **All or some.** If permitted to bid on less than all of a contract pursuant to the solicitation, the bidder may indicate on the bid whether it is for all or some, specifying what portions or items the supplier is willing to fulfill.

(f) **Delivery dates.** If the solicitation does not specify a delivery date for goods or services, the bidder shall specify a delivery date in the bid.

(g) **Clarification.** The Authority may solicit clarification from a bidder regarding the bid, but such clarification shall not allow a bidder the opportunity to alter or supplement bid pricing.

752:11-3-6. Bid changes and withdrawal

(a) A bidder wishing to change a bid submitted to the Authority shall withdraw the submitted bid and submit another bid before the closing date and time.

(b) bidder desiring to withdraw a bid entirely shall submit to the Authority a written withdrawal request created on the bidder's company letterhead, signed by the bidder's authorized representative. The withdrawal request must specify the method for returning or disposing of the bid.

752:11-3-7. Non-responsive bids.

The Authority shall document in the acquisition file if a bid is non-responsive and should be rejected on that basis. A bid may be rejected for reasons including, but not limited, to the following:

(1) Late bids received after the closing date and time;

(2) Failure to meet the terms and conditions of the solicitation;

(3) Missing forms or other required information;

(4) Incomplete forms;

(5) Illegible forms or forms not submitted in the proper format;

(6) Alterations appearing without initials of the person making the alteration;

(7) Use of an unauthorized signature when an authorized signature is required;

(8) Absence of a notary seal when and if a form calls for same;

(9) Missing bid bond or other surety;

(10) Items and/or services offered are not suitable for the intended use;

(11) Bid pricing does not meet the requirements of a solicitation or is determined by the evaluation committee to be excessive; and

(12) Failure to acknowledge a solicitation amendment.

752:11-3-8. Contract negotiation and award

(a) Documents submitted by a bidder in response to a solicitation are public records and will be available for review upon request, unless otherwise deemed proprietary or confidential, but only after a supplier is selected and the contract is awarded. If the bidder submits information in a response to a solicitation that the bidder considers proprietary or confidential, the bidder shall:

(1) submit such information separately;

(2) specifically identify what information is proprietary or confidential upon each page containing proprietary or confidential information;

(3) enumerate the specific reasons based on applicable law which support treatment of the material as exempt from disclosure; and

(4) conspicuously mark on the bid or bid package that it contains proprietary or confidential information.

(b) The Authority will review the information and may or may not designate a bidder's information as proprietary or confidential. If the Authority does not agree that the information is proprietary or confidential, then the Authority will return and not evaluate that information. the Authority may or may not reject all requests to disclose proprietary or confidential information designated as such. [74 O.S. § 85.10; 51 O.S. § 24A]

(c) The Authority shall make a contract award following bid opening and upon review of the following:

(1) Bid evaluation and documentation of same;

(2) Determination of lowest and best or Best Value bidder;

(3) Verification of the requirements, where applicable, identified at 752:11-3-1.

(d) An evaluation tie will be decided by a coin toss, the procedure for which will be determined by the CEO.

(e) The Authority may negotiate a contract with one or more suppliers.

(f) The Authority shall notify the successful bidder within five (5) business days of the contract award.

(g) The Authority may elect not to award a contract based on a determination that:

(1) No bid meets the requirements of the solicitation;

(2) All bids exceed fair market value for the acquisition;

(3) The bid price exceeds available funds;

(4) The Authority no longer requires the acquisition either in whole or in the form or manner specified in the solicitation; or

(5) Not awarding the contract is in the Authority's best interests.

752:11-3-9. Contract management

(a) **Contract performance.** A supplier shall deliver acquisitions within time periods specified in the contract. The Authority shall inspect acquisitions within a reasonable time following supplier delivery. Nevertheless, the Authority may reject acquisitions from the supplier that do not meet specifications or other terms or conditions of the contract regardless of the timing of an inspection, and the supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service. Title to goods and services does not pass to the Authority until it has received, inspected, and accepted the goods and services. The Authority will place in the acquisition file the date of delivery, the name and address of the supplier, a description of the goods received, and the signature of the receiving agency employee.

(b) **Change orders.** Contracts awarded through formal or informal competitive solicitations pursuant to this Subchapter cannot exceed $50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of $50,000. Contracts awarded through competitive sealed solicitation pursuant to this Subchapter may be increased by an amount that does not exceed 10 percent of the total acquisition purchase price. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. [See 74 O.S. § 85.7(A)(2)(b)]

(c) **Advance payment.** The Authority shall not pay for acquisitions a supplier has yet to deliver.

752:11-3-10. Acquisitions by facilities management and housekeeping contractor

(a) The Authority may contract with vendors to provide facilities management and/or housekeeping services. Contracts for these services shall be competitively bid.

(b) Terms of the contracts shall detail purchasing authority and responsibilities of the vendor. All acquisitions requiring Authority reimbursement per terms of the contract must be preapproved by the CFMO or comparable position. At a minimum, the vendor shall be required to follow 752:11-2-2, with the vendor permitted to make acquisitions not exceeding $5,000 on the open market. The Authority shall manage the acquisition process of any maintenance/construction project over $50,000, and shall follow the competitive bidding rules as identified at 752:11-3-4.

752:11-3-11. Professional service contracts

(a) A standard format for all agreements will be on file and changes will be coordinated with the PO. All professional service contracts must be forwarded to the PO for retention after approval by the CEO. The PO shall retain a central file that will contain:

(1) Official copy of the contract or purchase order

(2) Amendments

(3) Compliance audits or reviews

(4) Historical vendor performance

(5) The requisition

(6) Other related documents

(b) The Authority shall administer, monitor, and audit the professional services contract.

(c) The Authority may not enter into a professional service contract with a person who has separated employment from the Authority within one (1) year of the termination date of the individual's employment. [74 O.S. § 85.42(A)]

(d) If the final product of the contract is a written proposal, report, or study, the Authority shall maintain such written documentation in the acquisition file. [See 74 O.S. § 85.41(C)]

(e) Professional service contracts shall include:

(1) An audit clause which provides that all items of the supplier that relate to the services are subject to examination by the Authority, the State Auditor and Inspector, and the State Purchasing Director [74 O.S. § 85.41(E)];

(2) A statement certifying that no person who was involved in the development of the contract while employed by the Authority shall be employed to fulfill any of the services provided for under said contract [74 O.S. § 85.42(B)]; and

(3) A statement certifying that the supplier has not previously provided another state entity with a final written proposal, report, or study that is a substantial duplication of that which is prepared for the Authority.

752:11-3-12. Sole source contracts

The Authority need not seek competitive bids and may enter into a single or sole source contract for goods and services when Authority personnel seeking the acquisition completes an affidavit prepared on a form approved by the PO which gives

all the reasons why the specifications merit restriction of the goods or services to one person or business. The affidavit will then be reviewed by the PO and approved and signed by the CEO with such affidavit retained in the acquisition file. [*See* 74 O.S. § 85.45j(A)(2)] Falsely executed sole source contracts shall be grounds for discipline up to and including termination.

752:11-3-13. Emergency acquisitions

In the event of an Emergency Condition, the Authority may make an acquisition without following this Subchapter. In that event, the Authority will select a supplier or a group of suppliers to notify by telephone, facsimile, or by electronic means. The Authority will nevertheless obtain necessary documentation as identified at 752:11-3-1. All emergency acquisitions will be reviewed by the CEO and CFO and will be signed by the CEO.

752:11-3-14. Credit/debit card

(a) The PO is the only employee authorized to use a credit or debit card to make purchases on behalf of the Authority. The card shall not be loaned to another person. The PO shall immediately return said credit or debit card to the CFO upon separation of employment.

(b) The PO shall ensure that the card is kept in a secure manner and that the account number on the card is not posted or left in a conspicuous place.

(c) A receipt shall be obtained for all purchases regardless of order method. The receipt shall give an itemized and detailed description of the purchase and must include at a minimum:

(1) name and location of supplier;
(2) date of purchase;
(3) description of product purchased;
(4) unit price and quantity purchased; and
(5) transaction total.

(d) Individual transactions shall not exceed $2000 unless preapproved by the CFO. Monthly statements shall be submitted to and reviewed by the CFO and CEO.

SUBCHAPTER 5. DESIGN CONSULTANTS

752:11-5-1. Registration of Design Consultants

All Design Consultants desiring to perform services for the Authority must be registered with OMES. Any consultant not registered with OMES at the time the Authority announces a project may register with OMES and submit a letter of interest to the Authority.

752:11-5-2. Selection procedure

(a) The Authority shall develop a description of the project which shall include:

(1) A narrative description of the work being planned.
(2) The estimated cost and time schedule of the project.
(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.
(4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) The Authority shall send a solicitation letter to each consultant on the list of registered consultants maintained by OMES. The solicitation letter will include the description identified at (a) of this Section and shall notify the consultants of the last day their letters may be received to be considered as a vendor for the project.

(c) The Authority will request a copy of the information on file for each consultant that indicated interest in being considered for the announced project(s).

(d) The CFMO in conjunction with the ADC shall, where possible, select the three (3) best qualified consultants based upon the data in the files supplied by OMES and other information that may be supplied by the consultants. If the selection is for more than one consultant contract, at least two (2) consultants for each project should be included in the short list.

752:11-5-3. Scheduling and performing interviews

(a) The CFMO and the ADC will convene an interview committee to interview each consultant based on evaluation criteria developed by the CFMO in consultation with the ADC, including for example the following criteria:

(1) How will the consultant staff the proposed project?
(2) What is the consultant's proposed management plan?
(3) What is his previous experience for this project?
(4) Where is he located? How will he reduce travel costs if he is not close to the proposed project?
(5) What are his plans for project control?
(6) What examples of similar projects has he completed within the last five years?
(7) Has a judgment been paid by the consultant on his behalf for liability caused by professional errors and/or omissions in the past five years?
(8) Can the consultant demonstrate financial stability?
(9) Is the consultant properly insured?
(10) Does the consultant labor under any conflicts of interest as addressed at 752:11-1-4?
(11) Any other additional factors?

(b) Within thirty days of the scheduled interviews, each consultant should be notified by letter informing him that he has been selected for an interview. The letter should contain:

(1) Date, time, and place of interview. Interviews should be scheduled individually for each consultant.
(2) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.
(3) A copy of the interview criteria.
(4) The number of the interview committee members.

(c) Consultants will be selected on the basis of qualifications only, and not on the basis of cost. Oklahoma statutes prohibit the release to a third party any information on fees. Any consultant who discloses his fee, or any indication thereof, prior

to Negotiation of Contract, 752:11-3-8, shall be removed from consideration.

(d) The interviews are conducted privately with each consultant out of the hearing of other consultants.

(e) At the conclusion of all interviews, the interview committee will rate each, documenting its rationale, and select a consultant. All criteria and procedures used by the committee shall be documented for the record.

752:11-5-4. Negotiation of contract

(a) Following the interview committee's work, the CFMO or designee will contact the selected consultant and negotiate a contract. This is the first time that a discussion regarding the negotiation of fees may take place.

(b) The CFMO will request a letter from the selected consultant detailing the cost proposal with a breakdown of costs.

(c) The consultant shall develop his fee proposal and return it to the CFMO. Fee proposals shall be based on the consultant's cost to produce the work along with projected expenses and a fair profit not to exceed 15 percent.

(d) The fee will be expressed as a firm fixed price fee according to an agreed scope of work, or may be based on a time and expense basis with a "not-to-exceed" cap. After a fee has been determined, the consultant will be asked to modify the proposal to reflect the agreed upon scope of work and fee, which modified proposal shall then become part of the contract.

752:11-5-5. Award of contract

Contracts may be standard or non-standard depending on the project. Services may include all or any of the following depending on the size and type of project.

(1) Program planning, which may include the following:

(A) Space plan.

(B) Written and/or graphic program document as specified.

(C) Circulation allowances.

(D) Cost estimate.

(2) Schematic design, which may include the following:

(A) The line drawing and graphic representation of the floor plan, perspective drawings, and site orientation of the project.

(B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.

(C) Cost estimate.

(3) Design development. A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:

(A) The site plan for parking, street and pedestrian access.

(B) Overall dimensions.

(C) Rooms and traffic circulation within the buildings.

(D) Types of materials.

(E) Building elevations.

(F) Building sections.

(G) Recommended structural systems.

(H) Recommended mechanical systems and equipment based upon life cycle studies.

(I) Cost estimate.

(4) Construction phase services. The consultant may be required to perform specific construction phase services which include:

(A) Review and approval of shop drawings.

(B) Review and approval of pay requests.

(5) All standard contracts shall include a reference to construction monitoring which is periodic visits at intervals appropriate to the stage of the contractor's operations, by the consultant to the construction site to determine that the contractor is following the intent of the construction contract.

(6) Changes to the consultant's base contract may be approved by the CFMO as long as the scope of the change is generally included within the project description developed at 752:11-5-2(a) for which the consultant selection process was conducted. Changes must reference the correct contract and include the scope of the change, the fee for the change, and the source of the funding for the change. Changes to the consultant's base contract shall not result in fees that would exceed the caps set by 752:11-5-4(c)-(d).

752:11-5-6. Professional services contracts

As indicated at 752:11-1-3(c), engineers, architects, and land surveyors shall be based upon their professional expertise and qualifications with their fees being negotiated after selection, and shall not be required to bid their contracts.

SUBCHAPTER 7. CONSTRUCTION

752:11-7-1. Bid solicitations

(a) **Construction projects over $50,000.** Construction projects over $50,000 will be advertised in a newspaper of general circulation for two consecutive weekly issues of said newspaper with the first publication at least twenty (20) days prior to the day set for bid opening. Notice must also be provided to one in-state trade or construction publication, with publication of that information left to the discretion of that publication. No work shall be commenced until a written contract is executed and all required bonds and insurances have been provided by the contractor. [61 O.S. § 104]

(b) **Construction projects under $50,000.** Construction projects under $50,000 will not usually be advertised. The Authority shall develop a written, clearly defined scope of work with detailed requirements for the project. The Authority will then solicit bids by directly contacting three (3) or more contractors.

(c) **Minor Maintenance or Repair.** The Authority may award small projects below $5,000 to any qualified vendor. A written contract and proof of insurance is required prior to issuing the vendor a notice to proceed.

(d) **Emergency Projects.** When the CEO determines that an emergency situation exists, a contract may be awarded without competitively bidding it to correct the emergency condition.

752:11-7-2. Bid documents

(a) **Solicitation notice.** The solicitation notice will contain:

(1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.

(2) The location where a complete set of bidding documents may be obtained.

(3) The date and time for the MANDATORY site visit, if applicable. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.

(4) The location and time for the pre-bid conference if applicable. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.

(5) The date, time and place of the opening of bids.

(6) The name and address to whom competitive, sealed bids must be submitted.

(7) If applicable, any pre-qualification requirements pursuant to 61 O.S. § 118.

(8) Other information deemed of benefit to the public or prospective bidders.

(b) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any other source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the ADC to all bidders of record.

752:11-7-3. Bid submittal

(a) **Bid preparation.** Bids must be prepared in accordance with any instructions provided in the solicitation.

(b) **Competitively-Bid Projects.** Competitive bids cannot be submitted by telephone, email, or fax machine. Competitive bids may be delivered in person, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays, and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled bid opening at the time and day specified in the bid documents. Each envelope shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. The following information must be placed on the outside of each sealed bid envelope:

(1) Company name and address.

(2) Description of project.

(3) Project number and trade, i.e. 10 HVAC.

(4) Closing date and time.

(c) **Non-Competitively Bid Projects.** For projects under $50,000, written bids shall be received as indicated in the solicitation, which may permit the submission of bids electronically. Before a construction contract shall be awarded, the following must be assembled:

(1) A properly signed requisition form.

(2) Three (3) or more original written bids, when possible, including any declined bids, signed by the bidders.

(3) Scope of work with detailed requirements.

(4) Acceptance letter to award the contract.

752:11-7-4. Modifications/withdrawal of bids

Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail or delivered in person. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented. A bid to be withdrawn shall not be opened and shall be returned upon request of the bidder at the conclusion of the bid opening.

752:11-7-5. Bid openings

The bids are opened by the CFMO or his designee at the date and time specified in the announcement in the following manner and recorded by an assistant. Bid openings are open to the public and to all bidders.

(1) The bidder's name is announced.

(2) The bid is checked for completeness and correctness. Any of the following deficiencies may be grounds for disqualifying the bid:

(A) The bid must be signed.

(B) The Non-Collusion Certification must be present, signed, and properly notarized.

(C) If the total bid exceeds $50,000, a certified check, cashier's check, bid bond or bid letter of credit for 5 percent of the base bid price and the price of all alternate bids must be present.

(D) All equipment lists, selected materials, or other information when required by the specifications must be present.

752:11-7-6. Bid review and evaluation

(a) At the conclusion of the bid opening, bids will be reviewed and tabulated, and their contents verified. The following items are reviewed: Insurance carriers, bonding companies, and surety companies used to issue bonds and insurance must be registered to do business in Oklahoma and prequalified as good and sufficient by OMES.

(1) Verification of bid contents.

(2) When there is a variance between the amount in words and the figures, the amount in words shall govern.

(3) Bids containing omissions, alterations, additions, or conditions not called for, or containing a clause in which the bidder reserves the right to accept or reject a contract, shall be disqualified.

(4) The ADC may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is

based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work; and, if there is reasonable doubt that the bid will result in the lowest overall cost to the Authority even though it may be the low evaluated bid; or, if it is so unbalanced as to be tantamount to allowing an advance payment.

(5) Failure to submit unit prices for any requested work item shall cause the bid to be disqualified.

(b) Before a contract may be awarded to a bidder, the bidder's ability to perform the required work is considered. The Authority may require bidders to pre-qualify pursuant to 61 O.S. § 118 to determine the responsibility of bidders.

752:11-7-7. Contract award

(a) Bids are awarded on a lowest and best or Best Value criteria basis as indicated on the solicitation notice. If an award is made to other than the lowest bidder, the Authority shall prepare a statement setting forth the reason for its action and place that statement on file, open to public inspection. [61 O.S. § 117] The Authority will provide a copy of the contract to the successful bidder who shall be given a specific period of time, as outlined in project specifications, but not to exceed sixty days,. [61 O.S. § 113(A)], in which to execute the contract and obtain the necessary bonds and insurance.

(b) Projects over $50,000 require three bonds. [61 O.S. § 113(B)] All bonds required by Title 61 of the Oklahoma Statutes shall be provided by insurance carriers, bonding companies, or surety companies that are prequalified by OMES as good and sufficient in accordance with criteria established by OMES. [61 O.S. § 134]

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material, and repair of and parts for equipment as are used and consumed in the performance of the contract.

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Authority against defective workmanship and materials for a period of one (1) year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Authority against claims or liens from subcontractors or suppliers for services or materials used in the project.

(4) **Letters of credit.** Irrevocable letters of credit may be substituted for the bonds listed, but each letter must be for the total value of the contract. Alternatively, a single irrevocable letter of credit may be substituted for the bonds listed.

(c) If no timely bid is received after bid notices have been published on any proposed public construction contract which does not exceed $50,000, the Authority may negotiate the contract with a prospective contractor. The contract will be executed within six months after the date initially set for opening bids, and the work to be performed shall be as specified in the initial bidding documents. [61 O.S. § 119.1]

(d) Public liability and workers' compensation insurance in reasonable amounts shall be required for all projects, regardless of project size. the Authority may require the contractor to name the Authority and its architects or engineers, or both, as an additional insured under the public liability insurance, which requirement, if made, shall be specified in the bid documents. [61 O.S. § 113(B)(4)]

(1) Proof of workers' compensation insurance shall be required for all projects exceeding $50,000. The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(2) For projects less than $50,000, a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance.

(3) Additional forms of insurance or increases in the insurance amounts may be required. Any additions or increases shall be contained in the bid documents.

752:11-7-8. Pre-construction conference

Shortly after award of a contract, the Authority may, at its discretion, schedule a pre-construction conference. This meeting may include, when applicable, the Design Consultant, general contractor, a representative of the ADC and/or the CFMO, and other interested parties. The CFMO or his representative shall chair the meeting. The purpose of the meeting shall be to discuss the requirements and responsibilities of the various parties involved with the objective of expeditious handling of the construction contract.

752:11-7-9. Construction conference

(a) A construction conference may be called periodically by, when applicable, the CFMO or his designee or the Design Consultant to discuss:

(1) Project progress as it relates to schedule.

(2) Payment requests and their status.

(3) Change order requests and their status.

(4) Special problems and remedial action required.

(5) Results of previous remedial action.

(6) Other subjects as required.

(b) The meeting shall be chaired by the CFMO or his designee or the Design Consultant. Minutes of the meeting shall be kept, typed, and distributed to all applicable parties within five (5) working days.

752:11-7-10. Construction requirements; reviews and permits

(a) The Authority facilities shall be constructed, renovated, or improved in such a manner as to provide reasonable safety from fire, smoke, panic, and related hazards and to ensure a high level of health, comfort, and well-being for all occupants.

(b) Building construction, renovation, and improvement will require formal code review and a building permit.
(c) Plans and specifications for the Authority projects shall be reviewed and approved by the AHJ, who shall issue a permit upon approval.
(d) No project shall be awarded until such prescribed reviews are concluded and a building permit is issued.

752:11-7-11. Adopted codes

The Authority construction projects shall comply with all applicable codes adopted by the Oklahoma State Fire Marshal, current at the time the project is initiated; codes adopted by the Construction and Properties Department, OMES, as identified at OAC 260:65-5-4 and OAC 260:65-5-5; and any other additional codes as required, including but not limited to, for example, the Americans with Disabilities Act and related standards.

752:11-7-12. Payment requests

(a) Partial payments for work completed and materials stored on site may be submitted once each month. A detailed procedure to be followed is shown below:

(1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, and submit it to the CFMO or his designee for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the CFMO or his designee or Design Consultant.

(2) The contractor should meet with the CFMO or his designee and/or Design Consultant when the rough draft of the pay request is prepared to agree on percentages of work completed and finalize the final form. The contractor should furnish the CFMO or his designee and/or Design Consultant with one (1) electronic copy of the pay request and all supporting documents.

(3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable.

(4) If the contractor deems it necessary, and the CFMO or his designee and/or Design Consultant recommend, the contractor may store material off-site. To do so, there must be a written agreement between the Authority and the contractor which provides:

(A) proof of applicable insurance;
(B) a written guarantee of delivery to the job site;
(C) photos; and
(D) written title to all materials covered by the request for payment, which shall pass to the Authority.
(E) For particularly large projects, the Authority may require an on-site inspection of facilities by the CM or Design Consultant to verify the authenticity of quantities of stored materials.

(b) The Certificate of Contract Completion, Consent of Surety, Lien Release, and the Contractor's Warranties must be submitted with the final request for payment.

752:11-7-13. Change orders

(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the CFMO or his designee and/or Design Consultant shall issue a Proposal Request to the contractor. The Proposal Request shall be completed by the contractor and shall fully describe the scope of work explaining completely what each item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials; unit cost, labor, equipment, profit and overhead; and other expense items. The CFMO, in consultation with the ADC, will consider the completed Proposal Request and issue a Change Order if authorized.
(b) When the Proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order. All information required on the form shall be included. The completed Change Order will be signed by the CFMO and/or Design Consultant.
(c) When the change is less than $10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in (a) of this Section is not required.
(d) Awarded projects that have not been competitively bid cannot exceed $50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of $50,000. Cumulative change orders for awarded projects that have been competitively bid cannot exceed 10 percent of the original project bid amount. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total contract price.

752:11-7-14. Time extensions

The contract documents shall contain the basis upon which time extensions may be granted. Substantiating data must be submitted with the requests for extensions. Such time extensions, if justified, shall be granted by Change Order only. It is important that written notices of delay be submitted to the CFMO or his designee and/or Design Consultant within twenty (20) days of the delay. Time extensions for changes in the work must be included on the Change Order form authorizing such change.

752:11-7-15. Substantial completion inspection

(a) This inspection is to be requested by the contractor after he has determined that the project is substantially complete. Substantial completion is defined as the construction is sufficiently completed in accordance with the plans and specifications, as modified by any authorized changes, so that the owner

can occupy the building and/or use the facility for its intended use.

(b) After receipt of a list of items to be completed or corrected from the contractor, the inspection is to be scheduled by the CFMO or his designee and/or Design Consultant who shall send out written notification inviting the ADC and other interested persons to attend. After the inspection, the Certificate of Substantial Completion Form with punch list shall be prepared by the CFMO or his designee and/or Design Consultant. A time limit to complete the punch list of deficiencies shall be determined by the Contractor and approved by the CFMO or his designee and/or Design Consultant. Two (2) copies of the form shall be provided to the Authority for signature.

752:11-7-16. Final inspection

This inspection shall occur upon completion of construction and when requested by the contractor after he determines the project is finally complete and all punch list items have been completed. The CFMO or his designee and/or Design Consultant shall send out formal notification inviting the ADC and other interested parties to attend.

752:11-7-17. Contract completion

A Certificate of Contract Completion shall be prepared by the CFMO or his designee and/or Design Consultant. The contractor shall complete the Contractor's Affidavit on all required copies of the Certificate of Contract Completion and return to the CFMO or his designee and/or Design Consultant. The total of the contract shown on the certificate shall include the sum of all change orders. The contractor shall secure and transmit to the CFMO or his designee and/or Design Consultant a completed and notarized Consent of Surety with the contractor's Certificate of Final Payment. All submittals, operating manuals, brochures, as-built drawings, keys, warranties, and all other requirements of the contract shall have been submitted to the CFMO or his designee and/or Design Consultant with signed receipts from the using agency for the items received by them, before final payment is made.

SUBCHAPTER 9. CONSTRUCTION MANAGEMENT/AT RISK

752:11-9-1. Registration of Construction Managers

All Construction Managers desiring to perform services for the Authority must be registered with OMES. Any Construction Manager not registered with OMES at the time the Authority announces a project may register with OMES and submit a letter of interest to the Authority.

752:11-9-2. Project designation consideration

(a) The CFMO in consultation with the ADC shall consider the following three factors to determine whether a construction project merits consideration for use of the construction management delivery system:

(1) The project benefits the public. When considering designation, it shall be clearly evident that Construction Management will provide a public benefit, which may include:

(A) early completion of work, allowing for beneficial public occupancy;

(B) accommodating construction progress with phased funding;

(C) enabling the project to be placed under contract prior to losing expiring funding source; or

(D) other demonstrated public benefit.

(2) There is a need for cost control. When project requirements or technical components of a project are not fully defined, or options are available for building systems, the use of Construction Management would provide valuable input to the design process.

(3) The need exists for specialized or complex construction methods due to the unique nature of the project. Projects shall be considered specialized or complex when they involve sophisticated or complicated technical systems, renovation work, or work that must be completed on a critical time frame, or otherwise when a critical mission may be in jeopardy.

(4) Other factors may include:

(A) **Time constraints on project completion.**

(B) **The Authority's capabilities.** The capabilities of staff and whether staff has the ability and experience to effectively manage a project that utilizes construction management.

(C) **Funding.** The Authority shall demonstrate whether it has adequate funding to pay for services of the construction management firm and construction services.

(D) **Project components.** The construction execution could be enhanced by the services of a Construction Manager.

(b) Upon consideration of the identified factors and based on the recommendation of the CFMO, the CEO may designate the project delivery method as construction management.

752:11-9-3. Selection procedure

(a) **Description of the project.** The Authority shall develop a description of the project which shall include:

(1) A narrative description of the work being planned, including various project components;

(2) The estimated cost and time schedule of the project; and

(3) The source of the funding.

(b) **Request list of Construction Management.** The Authority shall submit a written request to OMES for a list of construction management firms currently registered with the Department.

(c) **Announce project.** The Authority will send a Request for Qualifications (RFQ) to each construction management firm on the list provided by OMES which must include the description of the project and the deadline when letters must be received for consideration.

(d) **Special circumstances.** In special circumstances, the Authority may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management firms.

(e) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:

(1) Procedures for submitting statements of qualification and procedures for making awards;

(2) Evaluation factors to be considered by the selection committee;

(3) A statement of work including the description of the project with any other summary information the Authority deems pertinent;

(4) A schedule for planned commencement and completion of the contract;

(5) Budget limits for construction of the project for which services are being sought; and

(6) Requirements for construction management firms to have bonds and insurance.

752:11-9-4. Selection committee

(a) **Members.** Whenever a solicitation is issued requiring Best Value Methodology as described at Subchapter 6 of this Chapter to determine the successful bidder, the CFMO or designee will assemble the ADC to serve as a Selection Committee.

(b) **Selection Monitor.** The CFMO will designate one member of the Selection Committee to serve as a Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:

(1) schedule and preside over Committee meetings;

(2) provide instructions to Committee members on the Best Value methodology for evaluation and rating of bid submittals;

(3) tabulation of the evaluation scores;

(4) review the Committee's rating results for dominant information and/or inconsistencies;

(5) discuss evaluations with Committee members to seek clarifications, if necessary;

(6) prioritize the final rating score;

(7) assist the Committee in determining the highest ranked firms for further consideration in interviews;

(8) assist the Committee in determining the apparent Best Value firm; and

(9) assisting with the Clarification Period activities.

(c) **Construction management interviews.** The Selection Committee shall select a competitive number of the best qualified construction management firms for interviews. When possible, a minimum of three (3) firms constitute a competitive number.

752:11-9-5. Scheduling and performing interviews

(a) All members of the interview committee shall participate in all interviews of each firm.

(b) An evaluation criteria list shall be developed to ensure that each firm is evaluated against a clearly established list of criteria made available to the firm at least seven (7) days prior to the interview. All interviews will be conducted identically. Evaluation criteria may include, but is not limited to, the following:

(1) Specialized experience and technical competence of the firm regarding the type of services required;

(2) Capacity and capability of the firm, including any consultants, to perform the work, including any specialized services, within the stated time limitations of the project;

(3) Past record of performance on contracts with government agencies or private industry with respect to control of costs, quality of work, and ability to meet schedules;

(4) Proximity to or familiarity with the area in which the project is located;

(5) The volume of work previously awarded by the State to the firm; and

(6) Any other factors that are relevant to the project as determined by the Authority.

(c) Questions concerning fees shall not be asked. Oklahoma law prohibits the requesting of any information on fees at this stage of the process. Any firm that discloses its fee, or any indication thereof, shall be removed from consideration. Construction management firms will be selected on the basis of qualifications and not on a financial basis.

(d) Each firm shall be notified by letter of the selection for interview. The letter shall contain:

(1) Date, time, and place of interview. Interviews should be scheduled individually for each firm;

(2) An indication of how much time the firm shall be permitted for the presentation and how much time shall be reserved for questions by the committee;

(3) A copy of the interview criteria; and

(4) Any other information which would help the committee to obtain information needed for them to properly evaluate the firm.

(e) Interviews must be conducted privately with each firm.

(f) At the conclusion of all interviews, the committee shall rate each firm so as to recommend to the Authority the relative ranking of each firm. All criteria and procedures used by the committee shall be documented for the record.

752:11-9-6. Fee negotiation and contracts

(a) Once the highest-ranking construction management firm is selected, the Authority shall request a fee proposal from the firm.

(b) Upon receipt of the written fee proposal, the Authority shall negotiate a contract including fees.

(c) In establishing the construction management fee, the Authority shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services.

(d) In the event the Authority is unable to negotiate a satisfactory contract with the selected firm, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Authority shall then undertake negotiations with the firm ranked second, beginning with a formal request for a fee proposal from that business. Failing accord

with the second firm, the Authority shall formally terminate negotiations with that firm. This process shall continue, with proposals received from and negotiations held with the next ranked firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.

(e) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the scope and duration of services.

(f) For Construction Management/At-Risk, there are essentially two phases of the contract:

(1) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the Construction Manager up to the point at which the design is far enough along for the Construction Manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the Construction Manager are the Construction Manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.

(2) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. The Authority will signal a move into Phase Two through issuance of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the Construction Manager and, if applicable, the Design Consultant. The Construction Manager will work in conjunction with the Design Consultant, if applicable, to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.

(g) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100 percent performance, payment, and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(h) Non-approval of the GMP allows the Authority to terminate the services of the Construction Manager or to renegotiate, as required.

(i) When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the Construction Manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with Subchapter 3 of this Chapter. Thus, in administering the construction contract, the Construction Manager will adhere to the competitive bidding requirements for advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(j) Because the Construction Manager is "at risk" for the total contract amount, the Construction Manager is permitted to self-perform portions of the work, provided that the work is competitively bid as a lump sum (each work package) under the same terms and conditions as the other bidders. The Authority must be notified of the Construction Manager's intent to bid a work package during each pre-bid meeting held to discuss outgoing bid packages or otherwise in writing to the CFMO.

(k) When individual work packages are bid as a lump sum, the Construction Manager's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the Construction Manager's contract becomes all lump sum.

(l) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the Construction Manager and the Authority must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Authority may allow an adjustment to the GMP in order to allow the Construction Manager to award all work packages.

752:11-9-7. Award of contract

The construction management contract shall be written and included in the project file.

752:11-9-8. Changes to base contract

Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed for which the selection process was conducted. All changes shall be in writing and signed by all parties to the contract.

SUBCHAPTER 11. BEST VALUE METHODOLOGY

752:11-11-1. Best Value vendor selection

The Best Value vendor selection and project delivery process consists of three primary phases:

(1) **Phase 1.** Vendor selection.

(2) **Phase 2.** Clarification period, which includes but may not be limited to:

(A) agreement on scope;

(B) description of services using performance measurements, if applicable; and,

(C) creation of contract requiring a Risk Report, Risk Management Plan, and all applicable legal terms and conditions.

(3) **Phase 3.** Management, which requires:

(A) the vendor to manage and control the project system to make reports to the Authority; and

(B) the Authority to perform project quality assurance by ensuring the vendor is using a quality control plan and through periodic inspection.

752:11-11-2. Vendor selection

Phase 1 uses a series of filters to identify which bidder provides the most value. For Construction Management/At

Risk contracts, for example, Subchapters 752:11-9-1 through 752:11-9-5 reflect Phase I vendor selection and should be read in tandem with this Subchapter. On or before the date stated in the solicitation, vendors submit documentation requested in the solicitation or bid documents information that will be evaluated, rated, and/or weighted, which may include, but is not limited to:

(1) **Past performance information.** The vendor submits performance information collected from past customers about past projects/services the vendor has completed.

(2) **Project capability.** The vendor submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, financial stability, proper insurance, the absence of any conflict of interest as such conflicts are addressed at 752:11-1-4, technical capability, documented performance measurements, vendor's ability to provide additional value, and pricing information as required by the solicitation.

(3) **Interviews.** The Selection Monitor will schedule interviews with representatives of selected firms as designated by the Selection Committee. The interview provides a forum for the vendor to discuss the project and answer questions concerning the ability to deliver the project/service.

(4) **Prioritization.** After completion of (1) through (3) of this Section, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each vendor.

(5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value vendor.

752:11-11-3. Clarification period

(a) The identified apparent Best Value vendor is invited to participate in the Clarification Phase. Only one firm at a time may be invited to participate. The clarification period is not a contract negotiation. This period is the final "filter," and the invited firm may still lose the project. Once invited to the clarification period, the vendor is responsible for scheduling and management of the related activities. The objective is to:

(1) ensure the vendor understands the project scope;

(2) allow the vendor to clarify how they will deliver the project/service on time;

(3) identify the accountabilities of other parties; and

(4) explain how the vendor will mitigate and manage any risk the vendor does not control.

(b) The vendor is responsible for understanding the project requirements and expectations.

(c) To complete the clarification phase, the vendor conducts required meetings, identifies specific requirements and provides relevant documents, which may include but is not limited to, the following:

(1) Executive Summary;

(2) A critical milestone schedule that includes the clarification period, the award, project/service delivery, and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;

(3) Identify all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how the Construction Manager will satisfy those concerns;

(4) Make any additional investigations as warranted;

(5) Provide a listing of major sub-vendor and suppliers. Ensure that any sub-vendors have a complete understanding of the project and have no technical or non-technical questions or concerns;

(6) Identify activities where the vendor will experience situations where there may be a lack of information, where un-foreseen conditions may exist, and activities where the vendor has no control over other participants or required activities in the delivery of the service.

(7) Identify and document in writing any value-added ideas the Authority has accepted or rejected, along with corresponding adjustments to the contract terms;

(8) A project plan including any final clarification of the proposal and any omitted information and identification of value-added provisions accepted by the Authority;

(9) Validation that the proposal is accurate and complete prior to submitting the final project scope;

(10) Develop a Risk Report template to communicate accountabilities and deviations, beginning with the clarification period;

(11) Develop a Risk Management Plan, which includes any risks the vendor does not control and how the vendor will mitigate or minimize those risks should they occur;

(12) Identify a performance measurement plan to communicate to the Authority how the vendor is performing during the project duration; and

(13) Provide assurances to satisfy any remaining project concerns that the Authority may have, including but not limited to adverse publicity; noncompliance with local, state, or federal law; safety and accident prevention or other risks within the control of the vendor that would cause unnecessary time-and-effort transactions by the Authority.

(d) If the bidder determines the proposal contains errors or the proposal is inaccurate, the bidder may withdraw the project proposal, but the bidder shall be prohibited from modifying the proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the CFMO.

(e) The vendor must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized, and suitable for attachment to a final negotiated contract.

(1) The final clarification meeting is not a question and answer session.

(2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Authority must be conducted prior to the clarification meeting.

(3) The bidder makes a clarification meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Clarification Phase.

(f) The Clarification Phase is the final selection filter. If at any time during the Clarification Phase, the Authority determines progress being made by the invited bidder is unsatisfactory, the Authority may terminate Clarification Phase activities with the invited bidder. The Authority may then commence a new Clarification Phase with the next highest ranked bidder.

752:11-11-4. Risk minimization and performance

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality, or project schedule caused by the vendor, the Authority, unforeseen conditions, or other parties. The Phase consists of, but is not limited to, a Risk Report detailing information provided by the Construction Manager, which may include:

(1) all key contact information;

(2) project milestone schedule;

(3) risk sheet;

(4) modification/deviation tracking;

(5) Risk Management Plan;

(6) any risks the Authority may require the vendor to document that could impact satisfaction; and

(7) performance measurements.

(b) The Construction Manager shall submit a Risk Report for the project/service weekly throughout the contract, or as otherwise required by the CFMO.

752:11-11-5. Transparency and Best Value documentation

(a) To protect the integrity of the selection process and fairness to bidders, the following will remain confidential as stated:

(1) Identities of individual bidders will not be revealed to voting members of a selection committee during evaluation of key submittals as identified in the solicitation until such time as the highest rated bidders are identified and advanced to the oral interview or award phase.

(2) To preserve integrity in the event a re-bid is necessary, contents of the individual bidders' submittals shall not be open to public inspection until such time as the contract award is made.

(3) A bidder shall clearly identify any information submitted in a response to a solicitation that the bidder considers confidential or proprietary and shall submit such clearly-identified information in a separate envelope. The CFMO shall review the information and may or may not designate the bidder's information as proprietary or confidential and may or may not reject requests to disclose the information so designated.

(b) Following the contract execution, all selection process documentation not otherwise protected will be available to the public for inspection.

752:11-11-6. Other requirements for contracts awarded using Best Value methodology

(a) 752: 11-11-2 and 752: 11-11-5 may apply to any contract awarded by the Authority using Best Value methodology to select the successful vendor.

(b) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.

(c) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the CFMO. Components of the plan must, at a minimum, include the following provisions:

(1) Bid Notices: method of making uniform public notification to interested subcontractors and suppliers;

(2) Availability of bid documents for inspection or acquisition by interested bidders;

(3) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.

(4) Method of evaluation of bid documents to determine final recommended contract awards.

(5) Method of public access to pricing, scoring, and final award information.

SUBCHAPTER 13. SUPPLIER PROTESTS

752:11-13-1. Supplier notification

A supplier may protest a contract award to the CEO of the Authority by submitting written notice to the CEO within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons for the protest. The CEO shall forthwith notify the supplier awarded the contract of the protest. Any ex parte contact with the CEO by the supplier protesting the award and the supplier awarded the contract is prohibited while any matter relating to the protest is pending. The CEO may enter an order by letter, staying contract performance upon such terms and conditions as the CEO determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced. The CEO shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.

752:11-13-2. Review and determination

The CEO shall review the supplier's protest and contract award documents and shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.

752:11-13-3. Supplier appeal of decision to deny protest

If the CEO denies the protest, the supplier protesting the award may appeal a denial of protest by filing, within ten (10) business days of the date of the CEO's notice of denial, a written appeal, setting forth all the relevant facts and reasons for the appeal.

752:11-13-4. Determination

The CEO shall assign the supplier's appeal to an Administrative Law Judge who shall be a licensed attorney retained by the Authority.The Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact, conclusions of law, and a proposed order to the CEO.The CEO shall determine a final order and send written notice of the final order sustaining or denying the supplier's appeal to the parties. The cost of actions necessary for the Authority to process a supplier's appeal, together with any other expenses incurred by the Authority due to the appeal, shall be paid by the Authority.

752:11-13-5. Administrative procedure

Administrative hearings shall be conducted in accordance with the following procedures:

(1) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest.

(2) **Burden of proof.** The burden of proof shall be upon the protestant, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) **Evidence.** The Administrative Law Judge shall give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by Oklahoma law for civil proceedings. Parties may conduct cross examination of witnesses required for a full and true disclosure of facts. Notice may be taken of judicially cognizable facts.

(4) **Representation.** Corporations may be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(5) **Proper parties.** In addition to the supplier protesting the contract award, the supplier awarded the contract and the Authority may participate in the bid protest proceedings as proper parties.

(6) **Discovery.** Discovery shall be permitted as determined by the Administrative Law Judge.

(7) **Testimony.** All testimony, either at depositions or at a hearing, shall be under oath or affirmation.

(8) **Official record.** The Authority shall employ a certified court reporter, whose transcription of the hearing and any related matters, together with all pleadings, motions, and other documents submitted or considered during the proceedings shall constitute the official record of the protest.

(9) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions;

(D) Require briefing of any or all issues;

(E) Conduct hearings;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses;

(H) Make proposed findings of facts, conclusions of law and a proposed order to the Chief Executive Officer; and

(I) Take other lawful actions necessary and proper in the interests of justice.

752:11-13-6. Remedies

The Administrative Law Judge may recommend in a proposed order that the Chief Executive Officer deny the supplier's appeal, that the contract be awarded to the protesting supplier, that the contract award be cancelled and rebid, or for such other relief as the facts and law warrant.

752:11-13-7. Decision to be final

The CEO shall make a final determination as evidenced by a final order. Final orders are not subject to administrative appeal.

[OAR Docket #19-682; filed 6-26-19]

TITLE 752. UNIVERSITY HOSPITALS AUTHORITY
CHAPTER 15. MEDICAL INFORMATION [REVOKED]

[OAR Docket #19-683]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Release of Medical Record Information [REVOKED]

752:15-1-1. Purpose [REVOKED]

752:15-1-2. Definitions [REVOKED]

752:15-1-3. Maintenance of records; employee responsibilities [REVOKED]

752:15-1-4. Evaluation of authorization [REVOKED]

752:15-1-5. Review of medical records by non-employees [REVOKED]

752:15-1-6. Review by medical records requestors [REVOKED]

752:15-1-7. Requests for specific reports and other information [REVOKED]

Subchapter 3. Release of Information for News Media [REVOKED]
752:15-3-1. Purpose [REVOKED]
752:15-3-2. Coordination of news/news media [REVOKED]
752:15-3-3. Facilitation of media access [REVOKED]
752:15-3-4. Release of information [REVOKED]
Subchapter 5. Release of Confidential Computerized Patient Information [REVOKED]
752:15-5-1. Purpose [REVOKED]
752:15-5-2. Computer access [REVOKED]
752:15-5-3. Information available [REVOKED]
752:15-5-4. Persons authorized to receive specific information [REVOKED]
752:15-5-5. Methods for receiving information [REVOKED]
Subchapter 7. Confidentiality - Patient Accounting [REVOKED]
752:15-7-1. Purpose [REVOKED]
752:15-7-2. General policy [REVOKED]
752:15-7-3. Requests for billing and/or medical information [REVOKED]
Subchapter 9. Confidentiality - Nursing Departments [REVOKED]
752:15-9-1. Purpose [REVOKED]
752:15-9-2. Record requests made to nursing departments [REVOKED]
752:15-9-3. Care of patient records and media requests about patient condition [REVOKED]
752:15-9-4. Other issues concerning patient confidentiality [REVOKED]
Subchapter 11. Confidentiality - Admitting and Registration [REVOKED]
752:15-11-1. Purpose [REVOKED]
752:15-11-2. Protecting confidentiality of records [REVOKED]
752:15-11-3. Requests for patient information [REVOKED]
Subchapter 13. Patients' Rights and Responsibilities [REVOKED]
752:15-13-1. Purpose [REVOKED]
752:15-13-2. General policy [REVOKED]
752:15-13-3. Specific patient rights, responsibilities and rights statement [REVOKED]

AUTHORITY:
University Hospitals Authority Act; 63 O.S. § 3208(B)(1)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019

COMMENT PERIOD:
February 15, 2019, through March 18, 2019

PUBLIC HEARING:
March 19, 2019

ADOPTION:
March 25, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 27, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019, by HJR 1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
September 18, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The University Hospitals Authority has conducted a substantial update to its rules to better reflect current information and practices, including purchasing and construction procedures. The Authority no longer operates the hospitals, so rules related to actual operation of the hospitals have been revoked.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 18, 2019:

SUBCHAPTER 1. RELEASE OF MEDICAL RECORD INFORMATION [REVOKED]

752:15-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to provide rules for The University Hospitals (TUH), to protect patient confidentiality, regulate the release of medical information, and to establish certain rights of patients.~~

752:15-1-2. Definitions [REVOKED]

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

~~**"Administration"** means TUH personnel who are Assistant Administrators and above.~~

~~**"AIDS"** means Acquired Immune Deficiency Syndrome.~~

~~**"Authorization"** means a consent form for the release of medical information which must have the individual hospital or institution to which it is addressed, the name, address of the person to whom the information or copies may be released, and the information or specific reports to be released. See 752:15-1-4(c).~~

~~**"Call Back Verification"** means a telephoned call by TUH personnel to verify requestor identity such as name and office.~~

~~**"Certified Copy"** means a copy of the medical record and a notarized letter certifying that it is a true and exact duplication of the medical record, and signed by the Director of the Medical Record Department or designee.~~

~~**"CHAMPUS"** means The Civilian Health and Medical Program of the Uniformed Services of the United States of America.~~

~~**"Chief Executive Officer"** or **"CEO"** means the highest ranking administrator at The University Hospitals.~~

~~**"Children's Hospital of Oklahoma"** or **"CHO"** means the Children's Hospital and outpatient clinics of The University Hospitals.~~

~~**"Confidential Information"** means patient information in the hospital's possession which is protected by law, the release of which is limited to authorization by the patient's signature or certain other circumstances as provided herein.~~

~~**"Confidentiality Cover Memo"** means an approved stamp or a cover memo which shall read as follows: This report is strictly confidential and is for the information only of the person to whom it is addressed. All records shall be deemed confidential and shall be identified as such by use of the stamp or cover memo.~~

~~**"DHS"** means the Oklahoma Department of Human Services and its departments and organizational components.~~

~~**"DDU"** means the Disability Determination Unit of the Department of Human Services.~~

~~**"Hospital Information Systems"** or **"HIS"** means the data processing department of TUH.~~

~~**"Hospital Information Systems Project Managers"** means the person or persons designated within HIS to plan and direct TUH projects and project teams.~~

~~**"Hospital Information Systems Security Administration"** means the person or persons designated with TUH to coordinate and control user security within TUH.~~

~~**"Informed Consent"** means consent by a person to the release of his or her medical records regarding reportable communicable disease, who must understand that by signing the authorization he or she is consenting to release of his or her medical information to the identified requestor.~~

~~**"Insurance Billing Audit"** means an audit initiated by the third party payor to assure that services billed were services actually received.~~

~~**"JCAHO"** means the Joint Commission on Accreditation of Healthcare Organizations.~~

~~**"Legal File"** means locked file(s) where medical records identified by TUH Legal Counsel are stored, which include lawsuits and tort claims against TUH and are available for patient care.~~

~~**"MES"** means the Medical Eligibility Service of the Department of Human Services.~~

~~**"Minor Emancipated"** means a minor patient who is married, living apart from his or her parents, who has a child, or who has ever been pregnant.~~

~~**"Minor Patient"** means a patient who has not reached his or her 18th birthday.~~

~~**"Module Managers"** means individuals appointed by TUH Administration who act as liaison between HIS and the user community representing a series of the departments and/or related departments. These individuals review all requests for terminal access and are responsible for the end result of the processes in their area of responsibility.~~

~~**"Nonconfidential Information"** means information that may be released without a valid authorization, including admission and discharge dates.~~

~~**"O'Donoghue Rehabilitation Institute"** means the Rehabilitation Institute of TUH.~~

~~**"OUHSC"** means the Oklahoma University Health Sciences Center located on the Oklahoma City campus of the University of Oklahoma.~~

~~**"Peer Review Organization or "PRO"** means an organization which is independent contractor for state and federal agencies to conduct reviews of medical records to verify accuracy of hospital charges and review adequacy of patient care.~~

~~**"PR"** means the Public Relations Department of The University Hospitals.~~

~~**"Release Restricted - Do Not Announce or DNA"** means medical records or computerized data about which the patient or legal guardian has requested that no information be released.~~

~~**"The University Hospitals"** or **"TUH"** means the University Hospital, Children's Hospital of Oklahoma, O'Donoghue Rehabilitation Institute and their respective outpatient clinics.~~

~~**"TUH Legal Counsel"** means the attorney or attorneys providing in-house legal services to TUH.~~

~~**"University Hospital"** or **"UH"** means the adult hospital and its outpatient clinics of TUH.~~

~~**"Utilization Review"** means a review conducted by intermediaries which examine a random sampling of medical records for payment.~~

752:15-1-3. Maintenance of records; employee responsibilities [REVOKED]

~~(a) **Maintenance of records.** TUH maintains records for multiple business purposes.~~

~~(b) **Employee responsibilities.** An integral responsibility of all TUH employees regardless of their position is the protection of confidentiality of hospital information. Discussing, releasing, confirming, accessing, distributing, or otherwise using hospital data is strictly prohibited, except as needed for legitimate business purposes between authorized individuals. All employees shall, at the time of their employment processing, be advised of state and federal laws governing confidentiality. The TUH Confidentiality statement cites specific laws that bind TUH employees.~~

~~(1) An employee is responsible for ensuring proper authorization is obtained before acting on any result for hospital information.~~

~~(2) Employees who disregard policy governing confidentiality of records are subject to immediate discipline up to and including termination.~~

~~(3) Specific procedures are available in individual departments regarding the protection of confidentiality, and employees are expected to know and adhere to these departmental procedures.~~

~~(4) Nothing in policy governing confidentiality of records is intended to violate any employee's right to discuss hospital operations with members of the Oklahoma Legislature or right of access to records in accordance with the Open Records Act.~~

752:15-1-4. Evaluation of authorization [REVOKED]

~~(a) **Determination.** The responsibility for determining if legitimate need, purpose, and authorization exists in any request for data from the primary medical record is the responsibility of the Medical Records Department. Determining if a requestor has proper authorization to access health care data requires analysis of the request on the basis of purpose, type of information and requesting party. Disclosure of patient identifiable information is limited to that which is stated on the authorization or relevant to the intended use. The original medical record may only be removed from the hospital premises in accordance with internal hospital policy and procedures.~~

~~(b) **Ownership of records.** The medical record is the property of TUH. The information in the medical record belongs to the patient.~~

~~(c) **Instructions.** Authorizations received by TUH shall be forwarded to the appropriate Medical Records Department within each facility.~~

~~(d) **Nonconfidential information.** It is the policy of the TUH Medical Record Department(s) to release admission and discharge dates to insurance companies or reviewing entities after call-back verification~~.

752:15-1-5. Review of medical records by non-employees [REVOKED]

~~(a) **Responsibilities of medical records personnel.** Medical records personnel shall review a record before it is examined by the patient or the patient's representative. It is the policy of TUH that original records requested for review by attorneys shall have all pages numbered prior to review.~~

~~(b) **Accommodating inspections.** Neither the patient, the patient's representative, or any other person who is not an authorized hospital employee or staff member shall be allowed to examine an original medical record alone. The Medical Record Department(s) shall provide accommodations for people to inspect records where proper surveillance by hospital personnel is possible.~~

~~(c) **Authorizations.** Authorizations must have the signature of the patient or legal guardian and the date authorization is signed. The date of authorization must be within the last year, or a new authorization is required.~~

~~(d) **Patient requests.** A patient, his legal guardian or his authorized representative has the right to review and have copies of his or her medical record, with the exception of psychiatric, alcohol or substance abuse treatment records.~~

~~(1) If treatment dates are not given, only last treatment information will be released. No information regarding reportable communicable disease diagnosis will be released without an informed consent.~~

~~(2) Information entered into the medical record may not be released after the authorization date, unless specifically stated as past, present and future information is requested.~~

~~(e) **Correspondence.** Correspondence is removed before requests are honored to review the record, unless specifically requested and signed for by the patient on the consent form itself, not just on the cover letter.~~

~~(f) **Legal file.** Medical records in a legal file may only be released with a valid authorization and with approval of TUH Legal Counsel. Such legal files must contain a control copy of the medical record.~~

~~(g) **Minor patient records.** A minor patient may not sign for treatment, review of the record or consent to the disclosure of medical information except under specail circumstances such as treatment of venereal disease, treatment of alcohol or substance abuse, treatment in connection with pregnancy or childbirth, procurement of family planning information and services, blood donation or unless emancipated. A minor emancipated patient may sign for a copy of his or her medical records. A statement of emancipation must be signed, together with the authorization.~~

~~(h) **Copy fee.** TUH may charge the maximum rate permitted by statute for copies of medical records. If a single fee will be $5.00 or more, payment may be required in advance. Collected fees shall be forwarded daily to TUH Patient Accounting Department.~~

752:15-1-6. Review by medical records requestors [REVOKED]

~~(a) **Accreditation, licensure and certification bodies.** Access by state licensing agencies is required by law. The State Department of Health, when acting in a licensing capacity, is not required to provide patient authorization to review medical records. The JCAHO is a voluntary survey and may access medical records to accomplish the survey's purpose with execution of a confidentiality agreement. Licensing agencies such as the State Board of Medical Licensure and Supervision, Oklahoma Board of Nurse Registration, Board of Pharmacy, etc., have the power to subpoena records. These agencies may be provided copies of records upon subpoena, and said records shall be rendered anonymous so that the patient cannot be identified.~~

~~(b) **Review by employers.** Employers, including OUHSC, TUH, the State of Oklahoma and DHS are not entitled to information concerning employee health care without valid patient authorization, even if the employer arranges for the insurance benefits. Employer requests for employee medical record information must have a valid authorization unless otherwise required by law or court order.~~

~~(c) **Review by government agencies.**~~

~~(1) **CHAMPUS.** CHAMPUS is a federal agency. Patient or guardian authorization is required.~~

~~(2) **DHS offices.** DHS county personnel may review the medical record or receive a copy without patient or guardian authorization, in order to fulfill statutorily required duties, i.e., child abuse evaluations and adult protective service evaluations and investigations.~~

~~(3) **Federal Bureau of Investigations (FBI).** See (k)(4) of this Section for information on review by the FBI.~~

~~(4) **Health departments.**~~

~~(A) **City-County Health Department.** Communicable diseases information, upon presentation of proper identification or call back verification, will be provided to city-county health departments as necessary to enforce provisions of Title 63, Oklahoma Statutes, Section 1-501 through 1-532.1.~~

~~(B) **State Health Department.** A representative of the State Health Department, upon presentation of proper identification or call back verification, may access information from the patient's medical record as necessary to enforce provisions of Title 63, Oklahoma Statutes Section 1-501 through 1-532.1.~~

~~(5) **Internal Revenue Service (IRS).** A request for the Internal Revenue Service requires valid authorization. An informed consent is required when reportable communicable disease is involved.~~

~~(6) **Interstate agencies.** A request from Interstate agencies requires a valid authorization from the patient or guardian. An informed consent is required when reportable communicable disease is involved.~~

~~(7) **Medical Eligibility Unit and Medical Evaluation Unit.** The Medical Eligibility Unit (MEU) and Medical Evacuation Unit, which are also part of the DHS Medical Services Division (MSD), may review the patient's chart for necessary information, and obtain copies upon request, with authorization of the patient or guardian. A signature~~

~~on the consent for admission form can be used if the request does not contain an authorization. An informed consent is required when reportable communicable disease is involved.~~

~~(8) **Social Security Disability Unit (SSDU).** The Social Security Disability Unit (SSDU), also known as the Disability Determination Unit (DDU), is a division of the Department of Human Services (DHS). Requested information is to be provided with authorization of the patient or guardian. A signature on the consent for admission form can be used if request does not contain one. An informed consent is required when reportable communicable disease is involved.~~

~~(9) **State Department of Mental Health (SDMH).** In the absence of a valid authorization, SDMH must provide a court order or legal documentation indicating that the patient is in custody of SDMH. An informed consent is required, when reportable communicable disease is involved.~~

~~(10) **Uniformed services of the United States and the Veterans Administration of the United States.** Disclosure to uniformed services of the United States and the Veterans Administration of the United States, requires patient or guardian authorization. An informed consent is required when reportable communicable disease is involved,~~

~~(11) **Vocational Rehabilitation Services (VRS).** Disclosure to Vocational Rehabilitation Services (VRS) requires patient or guardian authorization. An informed consent is required when reportable communicable disease is involved.~~

~~(12) **Workers' Compensation (WC).** Requests for records on workers' compensation cases require an authorization by the patient or guardian. A signature on the consent for admission form can be used for authorization if the request does not contain one. An informed consent is required when reportable communicable disease is involved.~~

~~(d) **Health care facilities - transfers and referrals.**~~

~~(1) **Physicians from health care facilities other than transferring or referring.** Physicians from health care facilities other than those transferring or referring patients must have a valid authorization except in an emergency situation.~~

~~(2) **Referring health care facilities.** Health care facilities that refer patients to TUH for medical care are authorized to receive copies of TUH medical records.~~

~~(3) **Transfer to other health care facilities.** Upon direct referral or transfer of the patient from TUH to another facility, the receiving facility may be provided a copy of the TUH medical record. TUH physicians must write an order in the record stating a copy of the record is to be sent with the patient.~~

~~(e) **Insurance companies.**~~

~~(1) **Billing audit.** Requests from private insurance companies to perform an audit of billing are referred to the Internal Audit Department. A valid authorization must be present prior to the audit. Upon receipt of proper notice, the Medical Record Department makes the chart available to the Internal Audit Department. Reportable communicable disease diagnosis requires informed consent prior to disclosure.~~

~~(2) **Insurance applications.** Applications for insurance coverage sometime include an authorization for disclosure of information that validates the release of information without future patient or guardian authorization. A copy of such an application or an authorization in the medical record within ninety (90) days of treatment is valid. Other medical records shall only be released with a signed authorization. If specific information is not requested, an abstract of pertinent information is sent. If there is a reportable communicable disease diagnosis, informed consent must be obtained prior to disclosure.~~

~~(3) **Concurrent insurance audits.**~~

~~(A) **Signed contracts.** Insurance companies which have a signed contract with TUH are allowed concurrent review privileges, and do not require a patient authorization. Concurrent reviewers are issued a badge by the release clerk and are provided a written list of patient names which will be reviewed.~~

~~(B) **Without signed contracts.** A review from an insurance company without a signed contract with TUH must notify the Medical Records Release of information Division, prior to the review, that they will be coming to TUH to review the inpatient medical record. The release clerk will notify the insurance company and assure that a signed and dated authorization is in the chart prior to the review. The reviewer must furnish insurance identification, which the release clerk will copy, prior to being accompanied to the floor by the release clerk. The release clerk will remain with the review to assure the original confidential record is not altered, destroyed or removed from the hospital.~~

~~(4) **Private disability insurance companies.** Private disability insurance companies must have patient or guardian authorization. Informed consent is necessary when reportable communicable disease diagnosis is involved.~~

~~(5) **Life insurance companies.** Disclosure to life insurance companies requires patient or guardian authorization. If request is pursuant to death benefits, authorization can be made by the insurance agent that represents the beneficiary. Informed consent is required when reportable communicable disease is involved.~~

~~(f) **News media.** Requests from the news media for medical information or patient information should be directed to TUH Public Relations Department.~~

~~(g) **Patient, parents, and legal guardian requests.**~~

~~(1) **Parents and guardians.** The parents (custodial and non custodial) and legal guardian have the right to review or obtain copies of a minor's medical record with proper authorization. *Any information or any record relating to a minor child which is available to the custodial parent of the child, upon request, shall also be provided the non custodial parent of the child. Provided, however, that this right may be restricted by the court,*~~

~~*upon application, if such action is deemed necessary in the best interests of the child. For the purpose of this section, "information" and "record" shall include, but not be limited to, information and records kept by the school, physician and medical facility of the minor child.* [10:5.2]~~

~~(2) **Adopted persons.** Any request by an adopted person for medical records seeking the identity of their natural parents must be accompanied by a Court Order. Otherwise, medical records are rendered anonymous as to natural parental identity.~~

~~(3) **Adoptive parents.** Any request by adoptive parents for medical records prior to the adoption must be accompanied by a certified copy of the Adoption Decree. The records shall be rendered anonymous as to the parental identity. Requests for prospective adoptive parents for medical records must be accompanied by a copy of the custody order.~~

~~(4) **Children in DHS custody.**~~

~~(A) **Permanent custody child.** The Child Welfare District Supervisor or designee must sign the consent form for medical treatment for a child in permanent custody. Permanent custody guardians may authorize release of records, with a copy of proof of custody.~~

~~(B) **Temporary or emergency custody child.** The parent(s), if available, sign(s) the form consenting to medical treatment for a child in temporary or emergency custody. Parents must authorize release of medical records except in emergency situations. The signature of the judge is obtained for medical authorization as required by the court.~~

~~(5) **Adults with guardians.** Legal guardians of adults can sign authorization to review or obtain copies of the medical record; however, they must provide legal documentation of guardianship. Patient family members are not entitled to copies of the medical record without proper authorization from the patient or legal guardian.~~

~~(h) **Research.**~~

~~(1) **Internal studies.** The medical record is available for internal study through the internal procedure of the appropriate Medical Record Department, to approved physicians and medical students. To ensure their availability at all times for patient care purposes, an area is maintained within the Medical Record Department for study. Physicians and medical students must have a signed confidentiality statement on file.~~

~~(2) **Research by former physicians or staff members.** Use of medical records by former TUH physicians or staff members of TUH requires patient or guardian authorization, unless the former physician was a treating physician in the patient's care.~~

~~(3) **Research requests.** All research requests shall be directed to the appropriate administrative personnel prior to granting access to the medical record. Approved research requests must be directed to the appropriate Medical Record Department with a copy of the approval.~~

~~(i) **Residential facilities.** DHS or other residential facilities may receive requested information upon authorization of the parent or legal guardian.~~

~~(j) **Students.**~~

~~(1) **Nursing, pharmacy, rehabilitative services, allied health and health information management students.** Students from approved affiliated programs may review patient medical records without patient authorization. Written confirmation, or a verified phone call, should be provided by the sponsoring hospital department to the appropriate Medical Record Director prior to access or review of medical record information. Students may review the record in the department, but may not make copies of the patient medical record.~~

~~(2) **Medical students.** Medical students may review patient medical records without patient authorization, upon presentation of proper identification. Students may review the record in the department, but may not make copies of the patient's medical record.~~

~~(3) **Housestaff members and members of the medical staff.** Housestaff members and medical staff members may review patient records without patient authorization and may obtain copies only if they are the treating physician or participated in the treatment of the patient. If the housestaff member or medical staff member did not treat or participated in the treatment of the patient, patient authorization must be obtained.~~

~~(k) **Third parties.**~~

~~(1) **Attorneys.** Confidential information may be released to attorneys upon receipt of a valid authorization.~~

~~(A) **Court orders.** A court order to produce the medical record or review of the medical record is honored if the order is signed by the judge or a certified copy of the order is presented. The court order must be dated within six months. Copies of the original court order are acceptable. TUH personnel shall check with the court clerk if the order is older than six months to determine if the case is still active. If the case is still active, the court order shall be honored. If the case is not active, a new court order must be issued and presented.~~

~~(B) **Journal entry.** A journal entry is handled in the same manner as other court orders pursuant to (A) of this Paragraph.~~

~~(C) **Motions and applications.** TUH personnel shall hand carry all motions and applications to TUH Legal Counsel.~~

~~(D) **Subpoena duces tecum.** Upon receipt of a subpoena duces tecum, the supervisor contacts the appropriate attorney and asks for a proper authorization from the patient. Absent a legal objection, the attorney is told that TUH personnel will comply with the subpoena duces tecum and appear in court with the records, but that it will not be able to release a copy of the records to the appropriate attorney without an authorization from the patient or a court order from the judge. If the attorney provides an authorization from the patient, a certified copy of the medical record will be used in lieu of a personal appearance in court. Arrangements shall be made to either mail or have the copies picked up.~~

~~(E) **Petitions.** Requests for medical records that are accompanied by a petition in a medical malpractice case are to be copied as requested. (This does not apply to workers' compensation or personal injury cases.)~~

~~(2) **District attorneys and law enforcement personnel.** District attorneys and law enforcement personnel may have access to medical records and report(s) of injury (form CMH 25) to pursue investigations in accordance with Title 21, Oklahoma Statutes, Section 846. Access to any other information requires valid authorization or court order. Crime victim compensation information may be disclosed to the appropriate district attorney's office upon their request in order that a claim may be filed with the Oklahoma Crime Victim's Compensation Board. This request must be in writing from the appropriate district attorney's office.~~

~~(3) **Educational facilities (state and private).** A valid authorization is required for educational facility requests. Educational facility requests are screened carefully, and the physician may be contacted to approve the information prior to release.~~

~~(4) **Federal Bureau of Investigation (FBI) and the Oklahoma State Bureau of Investigation (OSBI).** Patient authorization and clearance as to what information meets the need of the request is necessary prior to releasing copies or chart review to the FBI or the OSBI. FBI requests to investigate violations of criminal law shall be honored upon presentation of a subpoena or probable cause warrant. Staff is to notify TUH Legal Counsel of the request prior to the release.~~

~~(5) **Investigational insurance firms.** Investigational insurance firms must have a valid authorization which states the reason to review or obtain copies of the medical record, and must provide seven days prior notice to the proper Medical Record Department. Informed consent is necessary when reportable communicable disease diagnosis is involved.~~

~~(6) **Medical examiner.** The medical examiner may review the record in the appropriate Medical Record Department, receive information via telephone after call back verification, or obtain copies. The medical examiner may not remove the original record from TUH. Requests from the medical examiner are honored, as required by statute, to investigate deaths including violence and suspicious or unknown circumstances.~~

~~(7) **Telephone requests.** Persons making telephone requests are asked to mail a written, valid authorization, unless the request is needed for emergency patient care. If the information is needed for emergency patient care, the request is handled by the supervisor responsible for release of information, and the information may be furnished upon requestor verification or by call back and completion of the emergency release form.~~

~~(8) **Walk in requests.** Walk in requests are processed according to the requestor and the nature of the usage of the request. Arrangements should be made with the requestor as to whether the copies are to be mailed or to be picked up.~~

752:15-1-7. Requests for specific reports and other information [REVOKED]

~~(a) **AIDS diagnosis or diagnosis of any other reportable communicable disease.** Under Title 63, Oklahoma Statutes, Section 1-502.2, any record which identifies any person who has, or may have, any communicable disease may only be released in the following circumstances (informed consent is not necessary if the patient has tested negative for a reportable communicable disease.)~~

~~(1) A release may be made upon court order.~~

~~(2) Release is made in writing, by or with the written consent of the person whose information is being kept confidential or with the written informed consent of the legal guardian or legal custodian with such person, or if such person is a minor, with the written consent of the parent or legal custodian of such minor. Informed consent means that the person consenting to release of their medical records regarding reportable communicable disease must understand that by signing the authorization they are consenting to release of their medical record to the identified requestor.~~

~~(3) A release may be made to certain medical personnel, peace officers, fire fighters, and health care workers who have had risk exposure. A release under these circumstances should not be made without consultation with TUH Legal Counsel.~~

~~(4) A release for statistical purposes can only be made so that no person is identified.~~

~~(5) Release is made of medical information among health care providers within a therapeutic environment for the purpose of diagnosis and treatment of the person whose information is released.~~

~~(b) **Alcohol abuse.** Alcohol abuse records are covered under substance abuse records. See (r) of this Section.~~

~~(c) **Anesthesia times.** Anesthesia times may be released over the telephone to the requesting insurance companies only. This request must be verified by call back.~~

~~(d) **Autopsy report.** Autopsy reports are considered a part of the medical record and may be released upon presentation of a valid authorization.~~

~~(e) **Copies of in-patient and outpatient hospital billing statements.** Copies of inpatient and outpatient hospital billing statements may be obtained from TUH Patient Accounting Department. All requests for copies of billing statements will be forwarded to TUH Patient Accounting Department, Post Office Box 26307, Oklahoma City, Oklahoma 73126.~~

~~(f) **Birth certificates.** Copies of birth certificates may be obtained from the Oklahoma State Department of Health (OSDH), and are not provided by TUH.~~

~~(g) **Blood type.** Blood type may be released with a valid written authorization. Blood type information may not be disclosed over the telephone.~~

~~(h) **Death certificates.** Copies of death certificates may be obtained from the OSDH and are not provided by TUH.~~

~~(i) **Drug abuse.** Drug abuse records are covered under substance abuse records. See (r) of this Section.~~

~~(j) **Immunization.** Immunization records are released with a valid written authorization. Request for release of immunization record may not be released by telephone.~~

~~(k) **Incomplete medical record.** Upon presentation of authorization, even if the chart is incomplete, or the patient is still in the hospital, the patient has an absolute right to a copy of his or her chart, even while in the hospital. However, any request is always limited by medical considerations and the reasonableness of copying the record under the particular circumstances. It is important to note on the authorization that the requestor is receiving an incomplete chart. When possible, include a list of remaining outstanding documents. It should be noted that any unsigned transcription of any sort is "incomplete" for purposes of complying with a request, and is not provided until completed by the physician. If providing records to DDS or MES, send notification that information is from an incomplete record.~~

~~(l) **Inpatient medical record.** If the patient is an in patient and an incomplete record exists at the nursing station, a copy of the record is only sent if the patient is transferring to another facility and the physician has ordered a copy of the incomplete chart to go with the patient for follow up care. Staff members are to follow the requesting physician's direction as to the time this information is provided.~~

~~(m) **Other hospital records.** Copies of medical records from other hospitals are not released to a patient, a patient's guardian or third party requestor unless specifically requested in writing on an Authorization form.~~

~~(n) **Request for psychiatric records by the patient.** Upon receipt of a request for psychiatric records, staff members are to contact the treating physician for approval before releasing said records to the patient. The treating physician will determine whether it is in the patient's best interest to release the records to the patient.~~

~~(o) **Court order for psychiatric records.** Upon receipt of a court order for psychiatric records, staff members are to contact the treating physician to ensure said physician has no objection to the release or whether that physician wants to provide input to the court. If the treating physician objects to releasing records ordered by the Court, TUH Legal Counsel will file a motion for protective order.~~

~~(p) **Psychiatric consult and other diagnosis.** A psychiatric consult, together with another diagnosis, is treated as a psychiatric record for that admission. The treating psychiatrist for psychiatric admissions and consults shall be contacted prior to release of records to the patient.~~

~~(q) **Requests for psychiatric records by third parties.** Psychiatric records shall be released to third parties upon presentation of a proper authorization signed by the patient.~~

~~(r) **Substance abuse.** Substance abuse records will be provided upon presentation of proper authorization from the patient. Substance abuse (alcohol, drug, etc.) records may not be released in response to a subpoena. A court order is required. Disclosure of medical records may only be made without the patient's consent in a medical emergency. Records of patients with secondary diagnosis of drug and alcohol abuse fall within these restrictions on disclosure.~~

~~(s) **Verification of dates of care.** A letter or printout of verification of dates of care may be provided to the patient upon request. Discretion must be exercised in releasing this information. If printouts of master index are provided, staff are to make sure when copying to block out everything other than dates of service.~~

~~(t) **Other requests.** Any situations or requests not identified in this subchapter are to be referred to the release of information supervisor or the assistant director of the medical record department of the appropriate facility.~~

SUBCHAPTER 3. RELEASE OF INFORMATION FOR NEWS MEDIA [REVOKED]

752:15-3-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to define rules to facilitate news media access to TUH in a courteous and efficient manner, release of information and response to the news media inquiries in a timely, accurate manner in accordance with TUH confidentiality policy.~~

752:15-3-2. Coordination of news/news media [REVOKED]

~~(a) It is the general policy of TUH that all news concerning the hospitals shall be coordinated through the Public Relations Department ("PR") acting under the direction of TUH Chief Executive Officer and the Director of PR.~~

~~(b) Policies and procedures for the release of information follow the rules of Principles of Medical Ethics of Journalism of the American Medical Association (AMA), the Canons of Journalism of the American Society of Newspaper Editors, the Standards of Ethics of the Radio and TV News Director's Association, the Code of Ethics of the American College of Healthcare Executives (ACHE), and the American Hospital Association (AHA).~~

752:15-3-3. Facilitation of media access [REVOKED]

~~(a) **Scheduled news media visits.** When news media visits are scheduled, notification of news media visits will be made ahead of time by PR to appropriate personnel, chief of staff, hospital administration, TUH Police Services, and nursing personnel. Physician interviews will be cleared by PR through the departments chiefs, medical director, or chiefs of staff. All interviews involving administrative staff will be cleared by PR through the CEO or Hospital Administrator. The PR associate or designee will meet news media personnel at the appropriate entrance of the hospital. The associate or designee will escort the news media to the interview and remain with the news media while they are in the hospital. To the degree possible, the Director of PR will orchestrate any visits by the news media.~~

~~(b) **Unscheduled news media visits - weekdays.** In cases where unscheduled news media visits occur on weekdays, 8:00 a.m. to 5:00 p.m., the news media will be escorted into the hospital by TUH Police Services. TUH Police Services will then~~

~~notify PR who will in turn meet the news media. PR associate or designee will escort the news media to the interview and obtain necessary release forms, and remain with the news media while they are in the hospitals.~~

~~(c) **Unscheduled news media visits - after hours.** When unscheduled news media visits occur after hours or weekends, the news media will be escorted by TUH Police Services to the lobby area of the individual hospital. The Director of PR or PR associate on call, should be notified. TUH Police Services shall remain with the news media until the PR representative arrives.~~

~~(d) **Disaster situations.** The news media will be directed by TUH Police Services to designated press areas during a disaster situation and the disaster policy followed as outlined in the disaster manual.~~

752:15-3-4. Release of information [REVOKED]

~~(a) **Response to news media inquiries.** Formal written news releases (about new programs, services, special procedures) will have prior approval from the source that is initiating the news release. Routine telephone inquiries such as patient condition information shall be handled by PR on weekdays from 8:00 a.m. until 5:00 p.m., and by the on-call PR personnel after hours and on weekends.~~

~~(b) **Cases of public records.**~~

~~(1) **Public record.** Cases of public record are those that are a matter of concern to civil authorities and certain information about them shall be automatically released for publication. These cases include births, deaths, accidents, and police cases such as persons under arrest or held under police surveillance, persons taken to a hospital by a law enforcement agency, or shootings, stabbings, poisonings, accidental injuries or any cases reported to civil authorities. In these cases, PR may confirm the patient's presence at TUH along with a general statement of condition:~~

~~(A) Good: Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators excellent.~~

~~(B) Fair: Vital signs are stable and within normal limits. Patient is conscious but may be uncomfortable. Indicators favorable.~~

~~(C) Serious: Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators questionable.~~

~~(D) Critical: Vital signs are unstable and not within normal limits. Patient may not be conscious. Indicators unfavorable. The following extent and nature of injuries (without further elaboration) may be given:~~

~~(i) Burns: Percent and degree of burns as confirmed by the attending physician.~~

~~(ii) Head Injuries: No further detail.~~

~~(iii) Limb fractures: Limbs identified, except there shall be no reference to the fracture if the patient is a child.~~

~~(iv) Internal injuries: With no further details.~~

~~(2) **Injury from criminal conduct.** Injuries involving criminal conduct shall be labeled generally without reference to details: gunshot wounds, stab wounds, or suspected poisoning. Greater detail may be provided by PR Director but only after consultation with the treating physician, police and legal counsel.~~

~~(3) **Minor patients.** Although the admission or treatment of a child may fall within a matter of public interest, the hospital shall not disclose the name or city of residence of the child without the consent of the parent or legal guardian. There shall not be any reference or inference that a child has suffered abuse or neglect regardless of whether a referral has been made to child welfare. This includes references or inferences to injuries which are peculiar to abuse or neglect.~~

~~(4) **Psychiatric patients (including substance abuse and attempted suicide.)** Regardless of public record or interest, any patient admitted for psychiatric reasons or to a psychiatric ward, including drug or alcohol detoxification, shall only have admission confirmed or denied to any outside inquiry. Diagnoses and/or unit are not released.~~

~~(5) **Transplants or unique procedures.** In the event of transplants, or special procedures or research procedures which attract the attention of the news media, a PR representative should consult at the outset with the patient or responsible family member and physician to develop a plan for release of information which will provide protection not only for the privacy interest but also accommodate the public interest in a medically newsworthy event. This plan shall include the guidelines provided by the Permission to Release Information to News Media, or may otherwise provide for the appearance by the physician for discussion of the procedures with the news media. In any event, a plan will exist which defines such limits.~~

~~(6) **Deaths.** A death is a matter of public record and may be reported after the next of kin have been notified. The Hospital Administrator, the Director of PR or attending physician may, after the next of kin have been notified, release the name and age of the deceased, the time of death, and the name of the next of kin. The name of the funeral director to which the body has been taken may be provided upon request. The cause of death for any patient may be released only with the permission by the responsible family member after consultation with the attending physician. The Permission for Release of Information to News Media form will be completed with the cause of death stated in the blank marked "other". If the death falls within the jurisdiction of the Medical Examiner, no information regarding cause of death may be disclosed.~~

~~(c) **Cases not of public record.**~~

~~(1) Unless the circumstances surrounding admission of a patient clearly indicate the situation is one of public record, the patient's admission shall be treated as confidential information and will not be confirmed or denied. No information shall be made available, unless the patient and/or responsible family member has executed a permission for Release of Information to News Media form.~~

~~(2) A Permission for Release of Information to News Media form must be executed to ensure proper release of information to the news media. The person responsible for execution of this form shall be the parent or guardian~~

~~if it is a minor patient, although if the minor is a teenager, he or she should also be consulted. Otherwise, the patient is always the primary party to consent unless he or she is deemed incompetent. The use of a responsible relative for execution of this form requires great caution and where any doubt regarding the patient's consent may exist, no release should be made and the form should not be executed. A copy of A Permission for Release of Information to News Media form should be included in the correspondence section of the patient's chart in addition to storage in PR files.~~

~~(3) No interview with a patient shall take place without written permission of the patient, parent or legal guardian on a Permission for Release of Information to News Media form with the additional authorization by the attending physician if he or she believes it will not jeopardize the patient's welfare.~~

~~(4) Deceased or unconscious patients shall not be photographed unless requested by the attending physician, with consent of the responsible family member.~~

~~(5) The hospital spokesperson may not release to the news media the name of the attending physician without consent from the patient, responsible family member, and attending physician. Disclosure of the attending physician's name may be tantamount to disclosure of the patient's specific medical problems.~~

~~(6) In the process of using or interpreting PR policies and procedures, there must always be an overriding concern for protection of the patient and their right to privacy.~~

SUBCHAPTER 5. RELEASE OF CONFIDENTIAL COMPUTERIZED PATIENT INFORMATION [REVOKED]

752:15-5-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to establish standards for the release of computerized patient information.~~

752:15-5-2. Computer access [REVOKED]

~~(a) TUH will take every effort to protect patient information. Computerized patient information, by screen, is managed by application software security. This security allows information access by screen group. When access is granted to a screen command, information on that screen for all patients, for all services and facilities becomes available to view, update, and research. Granting access privileges requires the development of and adherence to standard confidentiality rules.~~

~~(b) It shall be the policy of TUH to limit computer access to patient hospital activities and medical information. Access shall be granted on the basis of need and appropriateness with regard to job function. Included in this policy shall be all screen viewing, data entry, printed reports and magnetic media. The Module Manager Group, in conjunction with HIS Security Administration, shall consider confidentiality issues when creating and assigning security classes.~~

752:15-5-3. Information available [REVOKED]

~~Distinctive types of information are involved with the release of computerized patient information issues. Descriptions of such information, or examples of such information, are as follows:~~

~~(1) Clinical and ancillary information: Diagnosis, procedure, admit reason, progress notes, medications dispensed and laboratory results.~~

~~(2) Demographic information: Name, address, next of kin, insurance coverage, employer name and employer address.~~

~~(3) Billing information: Payments, adjustments, account phase, balance, combine and documentation.~~

~~(4) General information: Name, service, and bed location.~~

~~(5) System utilities: Chart tracking, chart deficiencies, pharmacy, materials management, and financial reporting.~~

~~(6) Appointment information: Appointment screens and reports.~~

~~(7) Revenue information: Charge, price override, and change charge.~~

~~(8) Pharmacy: Medications dispensed, orders, notes and allergies.~~

752:15-5-4. Persons authorized to receive specific information [REVOKED]

~~Individuals in distinct positions are authorized to receive computerized information as defined in distinct categories found at 752:15-5-3.~~

~~(1) Administration shall receive all information.~~

~~(2) **Physicians:**~~

~~(A) Shall receive on screen the clinical, demographic and appointment information.~~

~~(B) Shall receive clinical, demographic, appointments, chart deficiency, financial analysis by services and/or facility reports.~~

~~(3) Private entities shall receive clinical, demographic, and appointment information on screen only.~~

~~(4) Physician office staff shall receive appointment reports only.~~

~~(5) Ambulatory staff:~~

~~(A) Shall receive clinical, demographic, and appointment information on screen only.~~

~~(B) Shall receive clinical, demographic, and ancillary reports.~~

~~(6) Medical records staff:~~

~~(A) Shall receive clinical, demographic and chart utilities on screen only.~~

~~(B) Shall receive clinical, demographic and appointment reports.~~

~~(7) Admitting staff:~~

~~(A) Shall receive clinical, demographic and appointment information on screen only.~~

~~(B) Shall receive clinical, demographic and appointment reports.~~

~~(8) Inpatient nursing staff shall receive clinical and pharmacy information on screen only.~~

~~(9) Ancillary staff:~~

~~(A) Shall receive clinical, and demographic information on screen only.~~

~~(B) Shall receive clinical and demographic reports.~~

752:15-5-5. Methods for receiving information [REVOKED]

~~(a) **Command screens.** All employees granted access to patient data at TUH shall sign a confidentiality statement prior to receiving a user number and a password. This step is completed at the time of employment in the TUH Human Resources Division, which is located on the first floor of Nicholson Tower, CHO, Room NT 1N402. The signed statement becomes a permanent part of the employee's personnel record. Access is granted in accordance with access defined in section 752:15-5-4 by job task and classification. Exception to outlined access are addressed through the requesting supervisor, the module manager of the security class requested, and the security administrator.~~

~~(b) **Reports, standard internal.** Report screen access will be granted by job function, within a security class. Printed reports will be available to TUH employees via the access rules. Exceptions will be reviewed and approved by the module manager of the security class requested and the security manager.~~

~~(c) **Reports, external.** All requests outside of TUH for printed reports and/or verbal statements of hospital patient and/or financial data will be verified by the TUH Finance Department and approved by the Administrator of the hospital that is to provide the requested information.~~

~~(d) **Ad hoc reports, internal.** Special requests for printed data within an area of responsibility requires completion of a request for service with a statement of justification and must be signed by an Administrator. Special requests for printed data outside an area of responsibility requires signed approval from the area Module Manager as well as a completed request for service (i.e., any request for printed billing data will either come from TUH Patient Accounting or shall be signed off on by Patient Accounting personnel).~~

~~(e) **Ad hoc reports, external.** All requests outside of TUH for printed reports and/or verbal statements of hospital patient and/or financial data are verified by the TUH Finance Department and approved by the Administrator of the hospital who provide the requested information.~~

~~(f) **Magnetic media data, internal.** Requests for data stored on magnetic media, containing data within area of responsibility, are requested by the Module Manager with statement of intended use, signed off by the department manager and HIS project manager. Requests for data stored on magnetic media, containing data outside the area of responsibility are requested by the department manager, with statement of intended use, and signed off by the Module Manager and HIS Systems Project Manager.~~

~~(g) **Magnetic media data, external.** Requests for data stored on magnetic media to be distributed outside of TUH are approved by the Administrator of the hospital that is to provide the requested information and the HIS Project Manager, verified by the TUH Finance Department and recorded by HIS Administration.~~

SUBCHAPTER 7. CONFIDENTIALITY - PATIENT ACCOUNTING [REVOKED]

752:15-7-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to ensure confidentiality of all patient billing records and medical information, and to put into operation and enforce guidelines to prevent improper disclosure of patient's health care information.~~

752:15-7-2. General policy [REVOKED]

~~It is the policy of TUH Patient Accounting that personnel shall obtain proper authorization before releasing billing and/or medical information and the identification of the person requesting information is confirmed prior to release of information.~~

752:15-7-3. Requests for billing and/or medical information [REVOKED]

~~(a) TUH Patient Accounting personnel shall handle requests from employees of third party payors in the following manner:~~

~~(1) Verify that the party inquiring about the patient's billing records is in fact an employee of the third party payor. If there is a question as to the caller's identity, take their telephone number and call the person back at that number in order to substantiate the caller's identity.~~

~~(2) After verification of identity, TUH Patient Accounting personnel may verify information contained on the Universal Billing Claim Form #92 (UB92), pursuant to the caller's request for information.~~

~~(3) If the third party payor is requesting any medical record information, direct the caller to submit a written request to the appropriate Medical Records Department. Inform the caller that the Medical Records Department will normally require a written request from the third party payor along with a signed "Release of Information" form, signed by the patient, parent, or legal guardian.~~

~~(b) TUH Patient Accounting personnel shall address telephone calls from attorney(s) seeking patient billing and/or medical information about a patient in the following manner:~~

~~(1) Refer attorney inquiries to the TUH Patient Accounting Legal Unit, which in turn will work with the inquiring attorney to obtain billing and/or medical record information for lawsuits, workers' compensation, and liens, or refer the inquiring attorney to the proper department.~~

~~(2) If the inquiring attorney is requesting account information for which he is the guarantor (the person who makes or gives a guarantee), TUH Patient Accounting personnel may respond to his inquiries.~~

~~(3) If a Medicare or Medicaid patient requests an itemized billing statement be sent to their attorney, direct the telephone call to the TUH Patient Accounting Legal Unit.~~

~~(4) Other patients requesting an itemized billing statement shall have the billing statement sent to the address listed on the TUH computer system, unless the aggregate (to collect into one sum) charges exceed two thousand dollars ($2,000.00), in which case the caller should be referred to the TUH Patient Accounting Legal Unit. TUH~~

~~may need to file a lien (the legal claim of one person upon the property of another person for payment of a debt or the satisfaction of an obligation) in third party liability situations where charges exceed two thousand dollars ($2,000.00).~~

~~(c) Telephone inquiries from other than third party payors or attorneys shall be handled in the following manner:~~

~~(1) No information shall be released over the telephone without asking the following six 6 critical questions:~~

~~(A) What is the account number or the medical record number?~~

~~(B) What is the patient's date of birth?~~

~~(C) What is the patient's address?~~

~~(D) What is the responsible party's name and social security number?~~

~~(E) What is the caller's relationship to the patient? (For example, is the caller the husband, wife, brother, sister, legal guardian?)~~

~~(F) What is the caller's name?~~

~~(2) If the caller cannot answer the questions in (1) of this Subsection, do not give out information over the telephone. Personnel of TUH Patient Accounting may elect to call the inquirer back at the telephone number listed on the TUH computer system, or send the information by mail to the responsible party's address as listed on TUH computer system. In any event, TUH Patient Accounting personnel shall not release medical record information (i.e., private health care information.)~~

~~(d) Exceptions on giving billing and/or medical information over the telephone are as follows:~~

~~(1) If the caller does not know the patient's account number, medical record number, or the responsible party's social security number, but is able to answer all of the other questions listed in (c) of this section, then TUH Patient Accounting personnel may give information over the telephone.~~

~~(2) The TUH employee shall not give out information to anyone other than the patient, parent or legal guardian of a patient (if they are listed as the responsible party or living in the home), and only if the caller is able to answer the questions as outlined in (c) of this section. Other individuals making inquiries shall submit a written release of information form signed by the patient or legal guardian.~~

~~(3) Where Medicaid is a payor source, copies of the Universal Billing Claim Form #92 (UB92) and/or itemized billing statements are not released to the patient, parent or legal guardian. Such inquires shall be directed to the TUH Patient Accounting Legal Unit. In addition, if a party calls requesting an itemized billing statement in excess of two thousand dollars ($2,000.00) and where services were in connection with an incident in which the patient was injured, the requesting caller should be referred to the TUH Patient Accounting Legal Unit.~~

~~(4) Special circumstances may arise where a child of an older patient may inquire about the parent's account. In such circumstances where it is obvious that the child is trying to assist the parent with the financial aspects of their account, TUH Patient Accounting personnel may divulge financial information with caution, but only after the inquiring caller has complied with (c) of this Section.~~

~~(e) All walk in inquiries shall be handled as follows:~~

~~(1) Request the same information as stated in (c) of this section. Verify identification by driver's license, social security card, or business card if appropriate. If the inquirer is anyone other than the patient, parent or legal guardian, personnel of TUH Patient Accounting shall obtain a Release of Information form from the inquirer which as been signed and recently dated by the patient, parent, or legal guardian, before releasing any information. If the walk in inquirer is the patient, parent, or legal guardian, TUH Patient Accounting personnel may release any financial information.~~

~~(2) In DNA cases, care should be taken to release insurance information only to the policy holder. Copies of the Universal Billing Claim Form #92 (UB92) shall not be released to a patient, parent, or guardian, as it contains medical record information. All requests for medical record information must go through the appropriate Medical Records Department.~~

~~(f) Written inquiries shall be handled as follows:~~

~~(1) Normal billing information contained on the UB92 can be released to the third party payor by mail. A Release of Information form signed and recently dated by the patient, parent, or legal guardian must be attached to any written inquiries, other than insurance companies, before information can be released. Itemized billing statements can be mailed to the responsible party's address as listed on the TUH computer system. Copies of the UB92 shall not be released to a patient, parent or legal guardian, as it contains medical record information.~~

~~(2) Where Medicaid is a payor source, copies of the UB92 and/or itemized billing statements are not to be released to the patient, parent or legal guardian. Direct such inquiries to the TUH Patient Accounting Legal Unit.~~

~~(3) If a party requests an itemized billing statement for a non-Medicaid account in excess of two thousand dollars ($2,000.00) in connection with an accident in which the patient was injured, refer the caller to TUH Patient Accounting Legal Unit.~~

~~(g) Psychiatric inquiries shall be handled as follows:~~

~~(1) No medical record information (including diagnosis) shall be released related to psychiatric services. Direct the inquirer to submit a written request to the appropriate Medical Records Department, with a current Release of Information form, signed by patient, parent, or legal guardian.~~

~~(2) The appropriate Medical Records Department will contact the physician before releasing psychiatric information, as it may not be in the best interest of the patient for this information to be released. The appropriate Medical Records Department will then follow their confidentiality policy and procedures.~~

~~(h) Drug/alcohol abuse inquiries shall be handled as follows:~~

~~(1) Acknowledgement of patient admission shall not be released, except to third party payors.~~

~~(2) Individuals making inquiries other than as described shall be directed to submit a written request to the appropriate Medical Records Department, with a current Authorization signed by the patient, parent, or legal guardian.~~

~~(i) Statistical and/or research inquiries shall be handled directing the inquirer to submit a written request to the Director of Patient Accounting for TUH or to the Assistant Director of Patient Accounting for TUH. The Assistant Director of Patient Accounting shall then determine proper channeling of inquiries as follows:~~

~~(1) Direct external statistical surveys or inquiries regarding accounts receivable or general ledger inquiries (revenue statistics) to the Assistant Director of Finance over General Accounting for TUH.~~

~~(2) Direct program financial viability or cost studies to the Assistant Director of Finance over Reimbursement for TUH.~~

~~(3) Direct billing and collection inquiries to the Director of Patient Accounting for TUH or the Assistant Director of Accounting for TUH. The Assistant Director of Patient Accounting shall determine what resources are available to gather such statistics. Such inquiries are generally made by nurses, physicians, physicians' secretaries, medical students, and Oklahoma State Department of Health personnel.~~

~~(4) Statistics related to communicable or venereal diseases shall not disclose or include the name of the patient.~~

~~(5) Billing and collecting information will not be released to other health care providers except for the Professional Practice Plan (PPP) Central Collections Unit, which handles all OUHSC physician billing.~~

~~(j) With inquiries from newspapers or reporters, personnel of TUH Patient Accounting shall not divulge any admitting, billing or medical information on any patient. The inquirer shall be directed to PR at 271-6969.~~

~~(k) DNA accounts shall be handled as follows:~~

~~(1) Acknowledgement of patient admission shall not be released, except to third party payors. At the present time, DNA can be found on the Change Registration ("CREG") screen. An inquirer on this type of account, if other than a third party payor, should be informed that no information is available.~~

~~(2) Cases of adoption shall be handled as follows:~~

~~(A) If a baby delivered at UH was placed for adoption after delivery, TUH Patient Accounting will designate accounts related to the delivery and adoption.~~

~~(B) In instances such as noted in (A) of this Paragraph, only insurance information may be disclosed to the policy holder, since coverage may belong to the birth mother and not to the adoptive parents.~~

~~(C) The adoptive parents should be referred to the attorney who handled the adoption if they request insurance information where the policy holder was the birth mother.~~

~~(D) TUH must not disclose the identity of the birth mother to the adoptive parents, or identity of the adoptive parents to the birth mother.~~

~~(l) Communicable diseases (i.e. AIDS) accounts shall be handled as follows:~~

~~(1) Acknowledgement of patient admission shall not be released except with proper authorization to third party payors.~~

~~(2) Personnel of TUH Patient Accounting shall not release any medical record information (including diagnosis) related to communicable diseases. The inquirer shall be directed to submit a written request to the appropriate Medical Records Department with a current Release of Information form signed by patient, parent, or legal guardian. The patient must sign a consent form for reportable communicable disease. This does not require a physician's approval. It may not be in the best interest of the patient for this information to be released. The appropriate Medical Records Department will follow their confidentiality policy and procedures.~~

~~(m) Any requests stated in this Section shall be directed to the Director of Patient Accounting for TUH or the Assistant Director of Patient Accounting for TUH for a determination of release of information.~~

SUBCHAPTER 9. CONFIDENTIALITY - NURSING DEPARTMENTS [REVOKED]

752:15-9-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to establish guidelines for nursing departments for the release of patient information and maintenance of patient confidentiality in compliance with TUH policy and procedures.~~

752:15-9-2. Record requests made to nursing departments [REVOKED]

~~(a) **The medical record.** External requests for copies of the medical record are directed by nursing departments to the appropriate Medical Records Department in accordance with this Chapter. All charts maintained in nursing areas are subject to rules concerning hospital medical records.~~

~~(b) **Media inquiries.** Release of news regarding TUH will be coordinated through PR.~~

~~(c) **Other issues concerning patient confidentiality.** All nursing personnel shall follow TUH confidentiality policies and procedures. Information regarding patients obtained in the course of employment at TUH is confidential and is not communicated to unauthorized persons. Care should be exercised to ensure that this information is communicated in a manner that the patient's confidentiality can be maintained.~~

752:15-9-3. Care of patient records and media requests about patient condition [REVOKED]

~~(a) **The medical record.** Nursing personnel may verify upon request by a patient or legal guardian that the hospital has created and is maintaining a medical record pertaining to care and services provided by the hospital(s). Nursing personnel will exercise reasonable care in protecting the confidentiality~~

~~of the medical record and patient information, e.g., denying unauthorized personnel or individuals access to chart(s) or the TUH computer system, and not leaving medical charts in easy access of unauthorized personnel or individuals or written information in view of the public. Any requests to review the medical record by the patient or legal guardian are forwarded to the attending physician through the charge nurse, clinic manager, or clinical coordinator.~~

~~(b) **Release of confidential information in response to media inquiries.** The charge nurse, clinical manager or clinical coordinator will provide, upon request from PR, information regarding patient(s) condition requested by the media. All requests shall be handled by PR.~~

752:15-9-4. Other issues concerning patient confidentiality [REVOKED]

~~(a) **Consent.** The person responsible for execution of the Release of Information to the News Media Form shall be the parent or legal guardian if it is a minor patient. If the patient is a teenager, he or she should also be consulted. Otherwise, the patient is always the primary party to consent unless he or she is incompetent. The use of a responsible relative for execution of the Release of Information to the News Media Form requires great caution, and where any doubt regarding the patient's consent may exist, no release should be made and the form should not be executed. A copy of the Release of Information to the News Media form should be included in the correspondence section of the patient's chart in addition to storage in PR or with the legal guardian, with the additional authorization by the attending physician, if he or she believes it will not jeopardize the patient's welfare.~~

~~(b) **Deceased or unconscious patients.** Deceased or unconscious patients are not photographed, unless requested by the attending physician with consent by the responsible family member or legal guardian.~~

~~(c) **Attending physician's name.** The attending physician's name shall not be disclosed without consent of the patient, responsible family member or legal guardian, and the attending physician.~~

~~(d) **DNA or No Information patient.** When a patient is designated as a DNA patient, the patient and the fact of his or her admission shall be treated as confidential information and will not be confirmed or denied. Nursing personnel may state "I am sorry, we do not have any information on an individual under that name." No other information is to be made available, unless the patient and or responsible family member has completed a Release of Information to the News Media Form. All flowers, gifts and mail shall be rejected. On a No Information patient, knowledge of the admission is publicly known; however, no information can be released on the patient and inquiries are to be referred to PR.~~

~~(e) **Computer information.** Nursing personnel who have access to the TUH computer system will comply with HIS policies and procedures regarding confidentiality.~~

SUBCHAPTER 11. CONFIDENTIALITY - ADMITTING AND REGISTRATION [REVOKED]

752:15-11-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to assist the Admitting Department(s) in providing both adequate access to data and adequate protection of patient confidentiality.~~

752:15-11-2. Protecting confidentiality of records [REVOKED]

~~(a) It is the responsibility of all Admitting Department(s) employees to protect the confidentiality of hospital information and of individual privacy, whether the request for information is by telephone or in person. This applies to information gained in any manner or from any source. Discussion, releasing, confirming, accessing, distributing, or otherwise using hospital data, other than that outlined in this procedure, it strictly prohibited.~~

~~(b) Any Admitting Department(s) employee who disregards this policy is subject to immediate disciplinary action up to and including termination.~~

~~(c) All employees shall, at the time of their employment processing, be advised of the state and federal laws governing confidentiality. At this time, the TUH Confidentiality Statement, which cites the specific laws that bind TUH personnel, will be signed. The signature of the employee on the Confidentiality statement will be requested to acknowledge having received and understood the information discussed therein.~~

752:15-11-3. Requests for patient information [REVOKED]

~~(a) The general public is only entitled to:~~

~~(1) The patient's room number and patient's telephone number.~~

~~(2) For patients in Intensive Care Units, and Labor and Delivery Units, the patient's room number, waiting room telephone number, and a condition report (good, fair, serious or critical).]~~

~~(b) Admitting Department(s) employees may not acknowledge an individual's presence in the hospital regarding the following:~~

~~(1) **Persons in state custody.** Oklahoma State Department of Corrections inmates and patients under the temporary or permanent custody of DHS will be flagged as DNA and will remain so as long as they are under the Oklahoma State Department of Corrections' or DHS' authority.~~

~~(2) **Mental health unit.** Telephone inquiries about mental health unit patients should be referred to the nursing unit.~~

~~(c) Upon direct referral of a patient from TUH to another health care facility, the following information may be released:~~

~~(1) Demographic information.~~

~~(2) Guarantor, payor information.~~

~~(3) Present hospital stay information.~~

~~(d) Generally, only admission data and discharge date may be released to insurance company requestors. In addition, the following:~~

~~(1) Precertification: Planned hospital stay information (recommendation for admission).~~

~~(2) Initial chart review: The information authorized by the patient's or legal guardian's signature on the record of admission.~~

~~(e) Requests for medical information or patient information from the news media should be directed to PR, telephone 271-6969.~~

~~(f) Patient information will not be withheld from divorced parents, unless there is a court order stating that one or both parents are not to be informed of the admission.~~

SUBCHAPTER 13. PATIENTS' RIGHTS AND RESPONSIBILITIES [REVOKED]

752:15-13-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to ensure that patients and their family members are informed of their rights and responsibilities as patients of TUH.~~

752:15-13-2. General policy [REVOKED]

~~(a) It is the policy of TUH to operate with a mutually beneficial trust and understanding of the patient, and that the patients will observe that those who contribute to their care and treatment are truly concerned about them as individuals.~~

~~(b) Patients shall be advised of their rights and responsibilities prior to admission or as soon afterwards as possible.~~

752:15-13-3. Specific patient rights, responsibilities and rights statement [REVOKED]

~~(a) **Provision of rights statement.** Upon the patient's admission, admitting personnel and nursing personnel will provide a copy of the Patients' Rights and Responsibilities statement to each patient or to the legal guardian or significant other in the event the patient is unable to receive the information.~~

~~(b) **Patients' rights.** The patient has the following rights:~~

~~(1) The patient has the right to considerate and respectful care.~~

~~(2) The patient has the right to obtain from his physician complete and current information concerning his diagnosis, treatment and prognosis in terms that the patient can be reasonably expected to understand. When it is not medically advisable to give such information to the patient, the information should be made available to an appropriate person on his or her behalf. They have the right to know, by name, the physician responsible for coordinating their care.~~

~~(3) Patients have the right to receive from their physician, information necessary to give informed consent prior to the start of any procedure and/or treatment, or to appoint someone to speak on their behalf should they be medically unable to do so. Except in emergencies, such information for informed consent should include, but not necessarily be limited to, the specific procedure and/or treatment, what medically significant alternatives for care or treatment exist, or when the patient requests information. Patients also have the right to know the name of the personal responsible for the procedures and/or treatment to be provided.~~

~~(4) The patient has the right to refuse treatment to the extent permitted by law and to be informed of the medical consequences of their actions.~~

~~(5) The patient has the right to every consideration of their privacy concerning their own medical care program. Care discussion, consultation, examination, and treatment are confidential and should be conducted discretely. Those not directly involved in the patient's care must have the permission of the patient to be present.~~

~~(6) The patient has the right to expect that all communications and records pertaining to their care should be treated as confidential.~~

~~(7) The patient has the right to expect that within its capacity, a hospital must make reasonable response to the request of a patient for services. The hospital must provide evaluation, service, and/or referral as indicated by the urgency of the case. When medically permissible, a patient may be transferred to another facility only after they have received complete information and explanation concerning the needs for and alternatives to such a transfer. The institution to which the patient is to be transferred must first have accepted the patient for transfer.~~

~~(8) The patient has the right to obtain information as to any relationship of their hospital to other health care and educational institutions insofar as their care is concerned. The patient has the right to obtain information as to the existence of any professional relationships among individuals, by name, who are treating them.~~

~~(9) The patient has the right to be advised if the hospital proposes to engage in or perform human experimentation affecting their care or treatment. The patient has the right to refuse to participate in such research projects.~~

~~(10) The patient has the right to expect reasonable continuity of care. They have the right to know in advance what appointment times and physicians are available, and where. The patient has the right to expect that the hospital will provide a mechanism whereby they are informed by their physician or a delegate of the physician of the patient's continuing health care requirements following discharge.~~

~~(11) The patient has the right to examine and receive an explanation of their billing statements, regardless of the source of payment.~~

~~(12) The patient has the right to know what hospital rules and regulations apply to their conduct as a patient.~~

~~(13) The patient at their own request and expense has the right to consult with a specialist.~~

~~(14) The patient has a right to address concerns regarding the quality of their care to the hospital staff.~~

~~(c) **Patient's responsibilities.** The patient has the following responsibilities:~~

~~(1) The patient has the obligation to respect the policies of the institution.~~

~~(2) The patient has the obligation to respect other patients and personnel involved in their care.~~

~~(3) The patient has the obligation to be open and honest concerning any present illness, past hospitalizations and any other matters related to their health.~~

~~(4) The patient has the obligation to make it know immediately if they do not understand the instructions given them concerning their health, or if they think they will not be able to comply with such instructions.~~

~~(5) The patient has the obligation to maintain personal and financial integrity with respect to health care services provided on their behalf.~~

~~(6) The patient is responsible for following the treatment plan recommended by the practitioner responsible for their care.~~

[OAR Docket #19-683; filed 6-26-19]

TITLE 753. UNIVERSITY HOSPITALS TRUST
CHAPTER 1. GENERAL AGENCY RULES

[OAR Docket #19-684]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
753:1-1-6. Location for information and filing [AMENDED]
753:1-1-7. Records [AMENDED]
753:1-1-8. Forms and instructions [REVOKED]
Subchapter 3. General Operations of the University Hospitals Trust
753:1-3-1. Official office [REVOKED]
753:1-3-2. Meetings of Board of Trustees [AMENDED]
753:1-3-3. Executive sessions [REVOKED]
753:1-3-4. Notice of meeting [REVOKED]
753:1-3-5. Agenda items [REVOKED]
Subchapter 5. Administrative Rules
753:1-5-2. Requests for declaratory rulings [REVOKED]
Subchapter 7. Formal and Informal Procedures
753:1-7-1. Purpose [AMENDED]
753:1-7-3. Complaints [REVOKED]
753:1-7-4. Representation [REVOKED]
AUTHORITY:
University Hospitals Authority Act; 63 O.S. §§ 3208(B)(1), 3224
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019, through March 18, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 25, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 27, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019, by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 18, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The University Hospitals Trust has conducted a substantial update to its rules to better reflect current information and practices.
CONTACT PERSON:
Randy Dowell, Chief Executive Officer, (405) 271-4962 or randy-dowell@ouhsc.edu

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 18, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

753:1-1-6. Location for information and filing

(a) Unless otherwise specified in this Title, the address and telephone number for communications with the Trust is: The University Hospitals Trust, ~~800~~940 N.E. 13th Street, Suite 6900, P. O. Box 26307, Oklahoma City, Oklahoma 73126, Telephone (405) 271-4962.

(b) The normal business hours of the Trust are 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

(c) Unless otherwise provided in this Title, anyone may file a document with the Trust by mail or hand delivery during normal business hours. The "filing date" is the date the Trust receives a document by mail or hand-delivery, not the date it is mailed or postmarked. ~~The Trust does not accept facsimiles or "FAXs" instead of original official documents.~~

~~(d) Unless a document clearly states otherwise, the signature of a person on a document filed with the Trust shall mean the person has read it and has personal knowledge of the information it contains, that every statement is true, that no statements are misleading; and that filing the document is not a delay tactic. If any document is not signed or is signed with intent to defeat the purposes of the rules in this Title, the CEO may ignore it and continue as though it had not been filed.~~

753:1-1-7. Records

(a) ~~**Records retention and disposition.**~~ The Trust keeps documents for at least the minimum time required by state and federal laws that pertain to archives and records. This varies depending on the type of document. The Trust has its records disposition schedules available for inspection.

(b) ~~**Removal of documents.** Before the effective date of a document, the CEO or his/her designee may approve a written request from a person, an agency, or party that has filed the document to revise, replace, or withdraw it. After the effective date of a document, the CEO or designee may allow it to be removed on the order of a court or administrative agency with jurisdiction over the controversy before it.~~ The Trust follows the Oklahoma Open Records Act and other relevant laws governing confidentiality.

~~(c) **Confidential and open records.**~~

~~(1) Many records in the Trust are available for public inspection and release, but some are not. The records that are not available for general public access may include~~

~~records described as confidential in this Section or in other Chapters in this Title, and other records that laws require or permit the Trust to keep confidential. The CEO formally keeps the following records confidential but may choose, in some cases, to make them public if law permits it.~~

~~(A) State employees' home addresses, home telephone numbers and social security numbers;~~

~~(B) Records which *relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation* [51:24A.7(A)(1)];~~

~~(C) Employee evaluations, payroll deductions, employment applications not resulting in a person being hired by the state, and other records that would result in a clearly unwarranted invasion of personal privacy if they were disclosed [51:24A.7(A)(2)];~~

~~(D) Before taking action, personal notes and personally created materials (other than the Trust's budget request) prepared by the Trust staff as an aid to memory [51:24A.9];~~

~~(E) Before taking action, research material leading to the adoption of a policy or the implementation of a project [51:24A.9];~~

~~(F) Records coming into the possession of the Trust *from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law* [51:24A.13];~~

~~(G) Documents, such as medical records and records protected by the attorney-client privilege, that are exempt from the Oklahoma Open Records Act or are specifically required or permitted by law to be kept confidential.~~

~~(2) All records that are not confidential are open for public inspection and copying. Examples of open records include:~~

~~(A) Employment applications that result in persons becoming state officials or employees [51:24A.7(B)(1); 51:24A.3(4)];~~

~~(B) Gross receipts of public funds [51:25A.7(B)(2)];~~

~~(C) Dates of an individual's employment with the state and his or her job title [51:24A.7(B)(3)]; and~~

~~(D) Any final disciplinary action resulting in loss of pay, suspension, demotion of positions or discharge [51:25A7(B)(4)].~~

~~(d) **Inspection and release of records.**~~

~~(1) Individuals may inspect and copy records during the Trust's regular business hours according to Trust procedures. The procedures protect the integrity and organization of the records and prevent excessive disruption of the Trust's essential functions [51:24A.5(5)].~~

~~(2) The CEO may give officers and employees of the state or federal government acting in their official capacities access to confidential records, when such disclosure is authorized by law.~~

~~(3) Each person shall have access to his or her own records in the Trust unless it is against the law [51:24A.7(C).~~

~~(e) The Trust staff shall only charge fees that are consistent with Section 24A.5 of Title 51 of the Oklahoma statutes.~~

753:1-1-8. Forms and instructions [REVOKED]

~~Other Chapters in this Title contain reference to forms and instructions the Trust requires. Citizens may contact the Trust or request blank forms and general information about completing or submitting them.~~

SUBCHAPTER 3. GENERAL OPERATIONS OF THE UNIVERSITY HOSPITALS TRUST

753:1-3-1. Official office [REVOKED]

~~The Office of the Trust and the Board of Trustees is 800 N.E. 13th Street, Oklahoma City, Oklahoma 73104. The telephone number is 271-4962. The office hours are from 8:30 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.~~

753:1-3-2. Meetings of Board of Trustees

~~The Board of Trustees shall file a schedule of regular meetings for the succeeding year with the Oklahoma Secretary of State by December 15th of each year. Special meetings may be called from time to time by the Chairman of the Board of Trustees, or the Vice-Chairman in his or her absence, with the required notice specified in the Oklahoma Open Meeting Act.~~ The Trust follows the Oklahoma Open Meetings Act.

753:1-3-3. Executive sessions [REVOKED]

~~The Board of Trustees may hold executive sessions as such meetings as are permitted by the Oklahoma Open Meeting Act.~~

753:1-3-4. Notice of meeting [REVOKED]

~~Notice of regular and special meetings shall be given in accordance with the provisions of the Oklahoma Open Meeting Act.~~

753:1-3-5. Agenda items [REVOKED]

~~The CEO prepares an agenda on behalf of the Board of Trustees for each meeting of the Board. The agenda is filed and posted in accordance with the Oklahoma Open Meeting Act. Members of the public may request the Board to place matters on the agenda for a meeting, and the CEO may use his or her discretion in placing such matters on the agenda.~~

SUBCHAPTER 5. ADMINISTRATIVE RULES

753:1-5-2. Requests for declaratory rulings [REVOKED]

~~(a) Any interested person or entity may petition the Board of Trustees for a declaratory ruling as to the applicability of any rule of the Board.~~

~~(b) The petition must identify the rule questioned and the date on which such rule became effective and shall summarize the contents of the rule. The petition shall contain a brief statement of the issue or issues raised by the rule which cause such a request to be made, and a statement of the petitioner's personal interest in the ruling of the Board and how a ruling of the Board would affect those interests.~~

~~(c) Upon receipt of the petition for declaratory ruling the Trust shall consider the petition and, within a reasonable time following receipt thereof, either deny the petition in writing, stating its reasons for denial, or issue a declaratory ruling on the matter(s) contained in the petition.~~

SUBCHAPTER 7. FORMAL AND INFORMAL PROCEDURES

753:1-7-1. Purpose

The rules of this Subchapter describe general formal and informal procedures used by the ~~Board of Trustees~~ Trust to take action and make decisions. ~~Other Chapters in this Title describe informal procedures that apply specifically to individual programs under the Trust's authority.~~

753:1-7-3. Complaints [REVOKED]

~~(a) Anyone may complain to the CEO about any matter under the CEO's authority. A complaint shall be in writing, and it shall include the following information:~~

~~(1) The name, address and telephone number of the person making the complaint;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person filing the complaint;~~

~~(4) A brief, clear description of the charge, problem or issue that is the basis for the complaint including names, dates, places and actions;~~

~~(5) The numbers and headings of the laws and rules that may apply;~~

~~(6) The remedy, if any, the person making the complaint seeks;~~

~~(7) The signature of the person making the complaint; and~~

~~(8) The date.~~

~~(b) If the complaint is repetitive, concerns a matter that has already been resolved, or a matter outside the CEO's authority, the CEO may reject the complaint.~~

~~(c) The CEO may provide others with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response must contain all of the following information:~~

~~(1) The name, address and telephone number of the person responding;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person responding;~~

~~(4) A specific admission, denial or explanation of each charge;~~

~~(5) A brief, clear description of the facts, including names, dates, places and actions;~~

~~(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;~~

~~(7) The numbers and headings of the laws and rules that may apply;~~

~~(8) The signature of the person responding; and~~

~~(9) The date.~~

~~(d) The CEO may refer complaints to informal procedures, such as telephone calls, letters, meetings, mediation, investigations, electronic mail or other appropriate procedures.~~

~~(e) The CEO shall make a decision about a complaint within 60 days after its receipt, unless the CEO needs more time. In that case, the Trust shall notify the person filing the complaint and persons filing any responses to the complaint.~~

753:1-7-4. Representation [REVOKED]

~~In any administrative review or appeal authorized by this Title, any party has the right to have an attorney who is a member of the Oklahoma Bar Association. The attorney shall act for and bind the party he or she represents. After a party names an attorney, the Trust shall communicate with the attorney and not with the party. It shall be the responsibility of the party's attorney to communicate with the party.~~

[OAR Docket #19-684; filed 6-26-19]

TITLE 753. UNIVERSITY HOSPITALS TRUST
CHAPTER 11. ACQUISITIONS AND CONSTRUCTION

[OAR Docket #19-685]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 11. Acquisitions and Constructions [NEW]
AUTHORITY:
University Hospitals Authority Act; 63 O.S. §§ 3208(B)(1), 3224
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019, through March 18, 2019
PUBLIC HEARING:
March 19, 2019
ADOPTION:
March 25, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 27, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019, by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 18, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The University Hospitals Trust has conducted a substantial update to its rules to better reflect current information and practices. The new Chapter 11 addresses updated purchasing and construction procedures.
CONTACT PERSON:
Randy Dowell, Chief Executive Officer, (405) 271-4962 or randy-dowell@ouhsc.edu

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 18, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

753:11-1-1. Purpose

The purpose of this Chapter is to establish the policies and procedures for acquisitions and construction for the Trust.

753:11-1-2. Definitions

The following words or terms shall have the following meaning unless the context clearly indicates otherwise:

"Acquisition" means all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which the Trust obtains for its use any materials, supplies, service, or equipment.

"Alternate bid" or **"Alternate"** means, for purposes of a construction contract, an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

"Architect" means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, 59 O.S. § 46.

"Architectural Design & Construction Team" or **"ADC"** means a team assembled within the Trust that may include an Architect, Project Manager, Superintendent, and/or other applicable member.

"Authority Having Jurisdiction" or **"AHJ"** means the University of Oklahoma employee who works on behalf of the Oklahoma State Fire Marshall, performing all building inspections and code review based on Oklahoma State Fire Marshall guidelines.

"Award" means when the Trust, the Chief Executive Officer, or other person authorized to make the acquisition, agrees on a suitable vendor for a bid and the successful vendor is notified.

"Base bid" means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

"Best value" means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the Trust, which may not be the lowest bidder.

"Bid" means a cost proposal submitted by a vendor in response to a request or solicitation for bids from the Trust.

"Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. Bidder is synonymous with a "supplier" or "vendor" responding to a solicitation.

"Certified Procurement Officer" or **"CPO"** means the Procurement Officer who has been OMES-certified.

"Chief Executive Officer" or **"CEO"** means the highest-ranking administrator of the Trust.

"Chief Financial Officer" or **"CFO"** means the Chief Financial Officer or comparable position who reports to the CEO on matters concerning the budget of the Trust.

"Chief Facilities Management Officer" or **"CFMO"** means the Chief Facilities Management Officer or comparable position who reports to the CEO and manages the day-to-day operations and maintenance of the Trust's facilities.

"Claim" means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

"Code" means the minimum and applicable building code or codes provided by this rule.

"Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, disposing, or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property.

"Construction Management" or **"CM"** means the project delivery method based on an agreement whereby the Trust acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

"Construction Management/At-Risk" means the project delivery method whereby the construction entity takes on the financial obligation to carry out construction under a specified cost agreement.

"Construction Manager" means a person who acts as an agent of the Trust for a construction project; who coordinates and manages the construction process; who is a member of the ADC; and who utilizes skills and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions; and who provides advice concerning construction, safety, and other issues related to the project that may surface. Issues may

include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost, or as may otherwise be specified in the solicitation issued by the state agency.

"Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.

"Contract" means the solicitation, vendor's response, negotiation document, and/or purchase order verifying an award and encumbering funds.

"Delivery system" means the approach used to develop and construct a project.

"Design-Bid-Build" means the delivery method used on construction projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. the Trust shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

"Emergency condition" means an event or need that was not reasonably foreseeable but that is serious, unexpected, and potentially dangerous, and for which action must be taken before a bid can be prepared or put into action.

"Engineer" means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, of Title 59 of the Oklahoma Statutes.

"Evaluation criteria" means that written criteria necessary to evaluate a supplier's or bidder's response to a solicitation which may include specialized experience, technical competence, capacity to perform, past performance, and other appropriate factors, as and where appropriate.

"Facility" means any building or improvement to real property.

"Fixed fee" means the type of fee which is expressed as a firm, fixed amount, for the services specified in the scope of work.

"FTE" means a full-time equivalent personnel position.

"Guaranteed Maximum Price" or **"GMP"** shall be the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.

"Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web.

"Interview committee" means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available and when appropriate.

"Invitation to Bid" or **"ITB"** means a type of solicitation in which the Trust or its designee requests suppliers to submit a bid for an acquisition, i.e. suppliers are invited to bid.

"Minimal value" or **"no value"** means surplus property that has less value than the costs that the Trust may incur to sell, trade, or dispose of the property.

"Non-Collusion Certification" means a certification submitted by a supplier with any competitive bid or contract executed by the Trust for goods or services in accordance with 74 O.S. § 85.22.

"Notice to Proceed" means the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

"OMES" means the Office of Management and Enterprise Services.

"Online bidding" means an electronic procurement process in which the Trust receives bids from vendors for goods, services, construction, or information services over the Internet in a real-time, competitive bidding event.

"OSFM" means the Oklahoma State Fire Marshal.

"Past performance rating" means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.

"Percentage fee" means a fee to be paid which is based upon a negotiated percentage of a resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

"Pre-Design services" means a formal planning process to establish function, scope, and cost of a future project.

"Procurement Officer" or **"PO"** means the individual with the authority to make purchases for goods and services on behalf of the Trust, such as the Human Resources and Business Systems Director or comparable position, with such authority and all necessary accompanying documentation clearly marked in the individual's file.

"Program" means the detailed description of the work and the scope of design services.

"Project" means the scope of services for which competitive proposals are requested from interested construction services vendors.

"Project capability" means the ability of a vendor to perform the requested services based on understanding of the requirement and mastery of necessary technical requirements while demonstrating a lack of technical risk as evidenced by measurement or accomplishment.

"Project" or **"Improvement"** means the collective act of design and construction of a new building, facility, or improvement, or the renovation of an existing building, facility, or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy.

"Request for Proposals" or **"RFP"** means a type of solicitation in which the Trust requests submission of proposals from suppliers.

"Request for Quotation" or **"RFQ"** means a simplified written or oral quote that the Trust or its designee requests from suppliers.

"Risk assessment" means identification of risks that the vendor does not control and the vendor's plan to minimize the risk.

"Screening committee" means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available and when appropriate.

"Selection criteria" means a listing of the considerations and requirements used to evaluate each prospective consultant.

"Short list" means a listing of consultants chosen during the screening process for detailed interview. When possible, this list shall contain at least three (3) consultants for a single project. If the process is selecting for more than one consultant contract, there should be two (2) consultants on the short list for every planned project.

"Solicitation" means the formal or informal manner in which the Trust determines the price of an acquisition from various vendors.

"Supplier" means "bidder" as defined in this section.

"Value-added" means adjustment to the project requirement and/or benefit offered to the owner that may be proposed by a vendor, stated in terms of impact to the project in return for a deviation in price, schedule or quality.

"Vendor" means "bidder" as defined in this section.

753:11-1-3. General provisions

(a) Goods and services shall be acquired by one of the following methods:

(1) Acquisition of products and/or services through organized buying groups such as OMES state-wide contracts.

(2) Direct purchase order for products and/or services to the vendor within the authorized dollar amounts and other limitations contained in Subchapter 2 of this Chapter.

(3) Formal or informal competitive solicitation of products and services.

(4) Sole Source acquisitions according to the procedure set forth in Subchapter 2 of this Chapter.

(5) Donation

(b) Goods and services shall meet the specifications required, and awards shall be based on lowest and best or Best Value criteria. Determinations shall be documented as specified in this Chapter.

(c) Professional service contracts for personal services rendered by the following professionals are exempt from competitive bidding. [74 O.S. § 85.7 and 18 O.S. § 803]:

(1) Physician, surgeon or doctor of medicine;
(2) Osteopathic physician or surgeon;
(3) Chiropodist-podiatrist;
(4) Optometrist;
(5) Architect;
(6) Attorney;
(7) Dentist;
(8) Public Accountant;
(9) Psychologist;
(10) Physical Therapist;
(11) Registered Nurse;
(12) Professional Engineer;
(13) Land Surveyor;
(14) Occupational Therapist;
(15) Speech pathologist;
(16) Audiologist;
(17) Registered Pharmacist;
(18) Licensed Perfusionist;
(19) Licensed Professional Counselor;
(20) Licensed Marital and Family Therapist;
(21) Dietitian;
(22) Social Worker;
(23) Licensed Alcohol and Drug Counselor; and
(24) Licensed Behavioral Practitioner.

(d) This list will be automatically amended to include new professional services as amended by the Legislature.

753:11-1-4. Ethics

(a) Employees of the Trust shall be subject to rules promulgated by the Oklahoma Ethics Commission concerning gifts from suppliers.

(b) Unless otherwise provided by law, the Trust shall not enter into a sole source or professional services contract or a contract for the services of any person who has terminated employment with or who has been terminated by the Trust for one (1) year after the termination date of the employee from the Trust. [74 O.S. § 85.42]

753:11-1-5. Online bidding [74 O.S. § 85.45r]

The Trust has determined that electronic or online bidding is often more advantageous than other procurement methods and thus may use online bidding to obtain bids for the purchase of goods, services, construction, and information services, where and as necessary. The Trust does not provide online bidding for bids and proposals that must be let competitively.

SUBCHAPTER 3. PURCHASING

753:11-3-1. Supplier selection and standard requirements

(a) **Vendor registration.** Any vendor wishing to do business with the Trust should register on the vendor bidder list maintained by OMES. The Trust may send solicitations or make acquisitions from vendors who are not on the vendor bidder list.

(b) **State use.** The Trust shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the purchase price. [74 O.S. § 85.12(C); 74 O.S. § 3007]

(c) **Statewide contracts.** The Trust may make acquisitions from statewide contracts. 74 O.S. § 85.12(C)]

(d) **Agreements and cooperative ventures.** The Trust may make acquisitions through agreements and cooperative ventures with other health care providers entered into pursuant to 62 O.S. § 3210(A)(1), the purposes of which are to share services or to provide a benefit to the hospitals.

(e) **Split purchasing.** Acquisitions shall not be made nor orders split for the purpose of evading competitive bidding requirements. [74 O.S. § 85.7(A)(2)]

(f) **Non-Collusion Certification.** A Non-Collusion Certification shall be included with any competitive bids and/or contract submitted to the Trust for goods or services. The Certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions. [74 O.S. § 85.22]

(g) **Taxes.**

(1) Prior to the award of a contract, the Trust shall verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. A copy of a current sales tax permit or confirmation of the permit's status from the Oklahoma Tax Commission must be included in the acquisition file.

(2) The Trust acquisitions are exempt from sales tax and federal excise tax.

(3) Purchases made by suppliers on behalf of the Trust are not exempt from sales or federal taxes.

(h) **Travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. the Trust shall not pay travel expenses not specified by the successful solicitation response. [74 O.S. § 85.40]

(i) **Bonds.** The Trust may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid. The bond, where required, will be retained until successful completion of the purpose for which the bond was drawn. An irrevocable letter of credit may be submitted in lieu of any bond specified.

(j) **Insurance.** A successful bidder shall provide proof of all insurance as and where needed and as required by the solicitation prior to contract award (e.g. workers compensation, general liability, etc.).

(k) **Verification of Registration with the Secretary of State.** Prior to the award of a contract, the Trust will verify that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §§ 1203-04.

753:11-3-2. Acquisitions

(a) Only the CEO, CFO, PO, or State Purchasing Director may issue a purchase order for direct acquisitions. Requests for purchase orders shall describe why the acquisition is needed.

(b) All maintenance/construction related requests shall be reviewed and approved by the CFMO or comparable position before submittal to the CEO, CFO, or PO.

(1) **Acquisitions Not Exceeding $5,000 or Other Limit as Permitted for CPOs.** Acquisitions of $5,000 or less, unless the CPO is permitted to make acquisitions of another higher limit, will be made on the open market using a fair and reasonable acquisition process and is conducted pursuant to this Subchapter.

(2) **Acquisitions Between $5,000 or Other Limit as Permitted for CPOs and $50,000.** Acquisitions between $5,000 or Other Limit as Permitted for CPOs and $50,000 require formal or informal competitive solicitation. Where possible, the Trust may solicit suppliers from the Supplier List maintained by OMES, with selection of suppliers rotated whenever there are more suppliers on the list than the necessary number of solicitations. For bids between $5,000 or Other Limit as Permitted for CPOs and $25,000, the Trust will solicit or otherwise obtain a minimum of three solicitations when possible. For bids between $25,000 and $50,000, the Trust will solicit or otherwise obtain a minimum of five solicitations when possible. If the requisite number of solicitations cannot be made, the CEO shall be informed of the reason why with such information documented in the acquisition file.

(3) **Acquisition above $50,000.** Acquisitions above $50,000 require a formal sealed competitive bidding process as outlined in this Subchapter.

753:11-3-3. Formal or Informal Competitive Solicitations ($5,000 - $50,000)

(a) The Trust shall solicit or otherwise obtain prices and delivery dates by mail, telephone, facsimile, or by electronic commerce and shall prepare written evaluation criteria to be considered in selection of the supplier.

(b) The Trust shall provide the specifications, terms, and conditions for the acquisition to each supplier selected for notification.

(c) All awards shall be based on lowest and best or Best Value criteria (74 O.S. § 85.7(B)). Documentation of prices, delivery dates, and the evaluation shall be placed in the acquisition file.

(d) Based on the complexity of the solicitation, the Trust may require a formal competitive solicitation, up to and including sealed solicitation.

753:11-3-4. Competitive sealed solicitations ($50,000+)

(a) **Solicitations generally.** Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal, or request for quotation. The solicitation shall include, at a minimum:

(1) any information regarding limitations on contact between suppliers and the Trust personnel during the solicitation process;

(2) whether the evaluation method will be lowest and best or Best Value;

(3) specifications or a statement of work;

(4) the closing date and time for acceptance of bids;

(5) the location of bid opening;

(6) general terms and conditions offered by the State Purchasing Director.

(b) **Solicitation Amendment.** If the Trust amends a solicitation, it shall notify each supplier sent the original solicitation of the amendment. In the event of an amendment, the supplier must acknowledge receipt of the amendment (1) in the supplier's bid or quotation for submission prior to the closing date and time, or (2) in an acknowledgment of receipt of the amendment sent prior to closing date and time if the supplier has already submitted a bid.

(c) **Preparation.** The bidder shall complete and submit all required forms as specified by the solicitation. Any form requiring a bidder's signature shall have an authorized signature, such signature indicating that the supplier has read and understood the information contained within the solicitation. The solicitation shall specify whether the Trust may award the contract (1) to more than one bidder and/or (2) to more than one bidder by item.

(d) **Evaluation.** Evaluation criteria contained in the solicitation shall be used as a scoring tool in considering submitted bids. Any evaluation scoring tool used shall be consistent with the evaluation criteria contained in the solicitation. Evaluation of the bids shall be documented and filed in the acquisition file. Criteria consistent with lowest and best or best value methodology, consistent with the methodology identified in the solicitation, shall be developed prior to receipt of proposals and consistently applied.

753:11-3-5. Bid submission

(a) **Bid locations.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Electronic bids.** Bids submitted in response to a formal or informal competitive solicitation pursuant to this Subchapter may be submitted electronically. Electronic submission of bids, when allowed, must be submitted in such manner that the time and date of submission are electronically linked to the bid and cannot be changed.

(c) **Sealed bids.** Bids submitted in response to competitive sealed solicitations pursuant to this Subchapter, the Trust will clearly mark the receipt date and time on the outside of all bid envelopes or containers. Late bids shall not be considered responsive and shall not be evaluated. Late bids will be returned unopened in a timely manner if the bidder requests the return of the unopened bid.

(d) **Alternate Bids.** Unless the solicitation prohibits, a bidder may submit alternate bids, but an alternate bid cannot materially deviate from the original solicitation specifications. Alternate bids must also be complete bids and shall be clearly marked to identify them as an alternate bid.

(e) **All or Some.** If permitted to bid on less than all of a contract pursuant to the solicitation, the bidder may indicate on the bid whether it is for all or some, specifying what portions or items the supplier is willing to fulfill.

(f) **Delivery dates.** If the solicitation does not specify a delivery date for goods or services, the bidder shall specify a delivery date in the bid.

(g) **Clarification.** The Trust may solicit clarification from a bidder regarding the bid, but such clarification shall not allow a bidder the opportunity to alter or supplement bid pricing.

753:11-3-6. Bid changes and withdrawal

(a) A bidder wishing to change a bid submitted to the Trust shall withdraw the submitted bid and submit another bid before the closing date and time.

(b) bidder desiring to withdraw a bid entirely shall submit to the Trust a written withdrawal request created on the bidder's company letterhead, signed by the bidder's authorized representative. The withdrawal request must specify the method for returning or disposing of the bid.

753:11-3-7. Non-responsive bids

The Trust shall document in the acquisition file if a bid is non-responsive and should be rejected on that basis. A bid may be rejected for reasons including, but not limited, to the following:

(1) Late bids received after the closing date and time;

(2) Failure to meet the terms and conditions of the solicitation;

(3) Missing forms or other required information;

(4) Incomplete forms;

(5) Illegible forms or forms not submitted in the proper format;

(6) Alterations appearing without initials of the person making the alteration;

(7) Use of an unauthorized signature when an authorized signature is required;

(8) Absence of a notary seal when and if a form calls for same;

(9) Missing bid bond or other surety;

(10) Items and/or services offered are not suitable for the intended use;

(11) Bid pricing does not meet the requirements of a solicitation or is determined by the evaluation committee to be excessive; and

(12) Failure to acknowledge a solicitation amendment.

753:11-3-8. Contract negotiation and award

(a) Documents submitted by a bidder in response to a solicitation are public records and will be available for review upon request, unless otherwise deemed proprietary or confidential, but only after a supplier is selected and the contract is awarded. If the bidder submits information in a response to a solicitation that the bidder considers proprietary or confidential, the bidder shall:

(1) submit such information separately;

(2) specifically identify what information is proprietary or confidential upon each page containing proprietary or confidential information;

(3) enumerate the specific reasons based on applicable law which support treatment of the material as exempt from disclosure; and

(4) conspicuously mark on the bid or bid package that it contains proprietary or confidential information.

(b) The Trust will review the information and may or may not designate a bidder's information as proprietary or confidential. If the Trust does not agree that the information is proprietary or confidential, then the Trust will return and not evaluate that information. the Trust may or may not reject all requests to disclose proprietary or confidential information designated as such. [74 O.S. § 85.10; 51 O.S. § 24A]

(c) The Trust shall make a contract award following bid opening and upon review of the following:

(1) Bid evaluation and documentation of same;

(2) Determination of lowest and best or Best Value bidder;

(3) Verification of the requirements, where applicable, identified at 753:11-3-1.

(d) An evaluation tie will be decided by a coin toss, the procedure for which will be determined by the CEO.

(e) The Trust may negotiate a contract with one or more suppliers.

(f) The Trust shall notify the successful bidder within five (5) business days of the contract award.

(g) The Trust may elect not to award a contract based on a determination that:

(1) No bid meets the requirements of the solicitation;

(2) All bids exceed fair market value for the acquisition;

(3) The bid price exceeds available funds;

(4) The Trust no longer requires the acquisition either in whole or in the form or manner specified in the solicitation; or

(5) Not awarding the contract is in the Trust's best interests.

753:11-3-9. Contract management

(a) **Contract performance.** A supplier shall deliver acquisitions within time periods specified in the contract. The Trust shall inspect acquisitions within a reasonable time following supplier delivery. Nevertheless, the Trust may reject acquisitions from the supplier that do not meet specifications or other terms or conditions of the contract regardless of the timing of an inspection, and the supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service. Title to goods and services does not pass to the Trust until it has received, inspected, and accepted the goods and services. The Trust will place in the acquisition file the date of delivery, the name and address of the supplier, a description of the goods received, and the signature of the receiving agency employee.

(b) **Change orders.** Contracts awarded through formal or informal competitive solicitations pursuant to this Subchapter cannot exceed $50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of $50,000. Contracts awarded through competitive sealed solicitation pursuant to this Subchapter may be increased by an amount that does not exceed 10 percent of the total acquisition purchase price. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. [See 74 O.S. § 85.7(A)(2)(b)]

(c) **Advance payment.** The Trust shall not pay for acquisitions a supplier has yet to deliver.

753:11-3-10. Acquisitions by facilities management and housekeeping contractor

(a) The Trust may contract with vendors to provide facilities management and/or housekeeping services. Contracts for these services shall be competitively bid.

(b) Terms of the contracts shall detail purchasing authority and responsibilities of the vendor. All acquisitions requiring Trust reimbursement per terms of the contract must be preapproved by the CFMO or comparable position. At a minimum, the vendor shall be required to follow 753:11-3-2, with the vendor permitted to make acquisitions not exceeding $5,000 on the open market. The Trust shall manage the acquisition process of any maintenance/construction project over $50,000, and shall follow the competitive bidding rules as identified at 753:11-3-4.

753:11-3-11. Professional service contracts

(a) A standard format for all agreements will be on file and changes will be coordinated with the PO. All professional service contracts must be forwarded to the PO for retention after approval by the CEO. The PO shall retain a central file that will contain:

(1) Official copy of the contract or purchase order

(2) Amendments

(3) Compliance audits or reviews

(4) Historical vendor performance

(5) The requisition

(6) Other related documents

(b) The Trust shall administer, monitor, and audit the professional services contract.

(c) The Trust may not enter into a professional service contract with a person who has separated employment from the Trust within one (1) year of the termination date of the individual's employment. [74 O.S. § 85.42(A)]

(d) If the final product of the contract is a written proposal, report, or study, the Trust shall maintain such written documentation in the acquisition file. [See 74 O.S. § 85.41(C)]

(e) Professional service contracts shall include:

(1) An audit clause which provides that all items of the supplier that relate to the services are subject to examination by the Trust, the State Auditor and Inspector, and the State Purchasing Director [74 O.S. § 85.41(E)];

(2) A statement certifying that no person who was involved in the development of the contract while employed by the Trust shall be employed to fulfill any of the services provided for under said contract [74 O.S. § 85.42(B)]; and

(3) A statement certifying that the supplier has not previously provided another state entity with a final written proposal, report, or study that is a substantial duplication of that which is prepared for the Trust.

753:11-3-12. Sole source contracts

The Trust need not seek competitive bids and may enter into a single or sole source contract for goods and services when Trust personnel seeking the acquisition completes an affidavit prepared on a form approved by the PO which gives all the reasons why the specifications merit restriction of the goods or services to one person or business. The affidavit will then be reviewed by the PO and approved and signed by the CEO with such affidavit retained in the acquisition file. [See 74 O.S. § 85.45j(A)(2)] Falsely executed sole source contracts shall be grounds for discipline up to and including termination.

753:11-3-13. Emergency acquisitions

In the event of an Emergency Condition, the Trust may make an acquisition without following this Subchapter. In that event, the Trust will select a supplier or a group of suppliers to notify by telephone, facsimile, or by electronic means. The Trust will nevertheless obtain necessary documentation as identified at 753:11-3-1. All emergency acquisitions will be reviewed by the CEO and CFO and will be signed by the CEO.

753:11-3-14. Credit/debit card

(a) The PO is the only employee authorized to use a credit or debit card to make purchases on behalf of the Trust. The card shall not be loaned to another person. The PO shall immediately return said credit or debit card to the CFO upon separation of employment.

(b) The PO shall ensure that the card is kept in a secure manner and that the account number on the card is not posted or left in a conspicuous place.

(c) A receipt shall be obtained for all purchases regardless of order method. The receipt shall give an itemized and detailed description of the purchase and must include at a minimum:

(1) name and location of supplier;
(2) date of purchase;
(3) description of product purchased;
(4) unit price and quantity purchased; and
(5) transaction total.

(d) Individual transactions shall not exceed $2000 unless preapproved by the CFO. Monthly statements shall be submitted to and reviewed by the CFO and CEO.

SUBCHAPTER 5. DESIGN CONSULTANTS

753:11-5-1. Registration of Design Consultants

All Design Consultants desiring to perform services for the Trust must be registered with OMES. Any consultant not registered with OMES at the time the Trust announces a project may register with OMES and submit a letter of interest to the Trust.

753:11-5-2. Selection procedure

(a) The Trust shall develop a description of the project which shall include:

(1) A narrative description of the work being planned.
(2) The estimated cost and time schedule of the project.
(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.
(4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) The Trust shall send a solicitation letter to each consultant on the list of registered consultants maintained by OMES. The solicitation letter will include the description identified at (a) of this Section and shall notify the consultants of the last day their letters may be received to be considered as a vendor for the project.

(c) The Trust will request a copy of the information on file for each consultant that indicated interest in being considered for the announced project(s).

(d) The CFMO in conjunction with the ADC shall, where possible, select the three (3) best qualified consultants based upon the data in the files supplied by OMES and other information that may be supplied by the consultants. If the selection is for more than one consultant contract, at least two (2) consultants for each project should be included in the short list.

753:11-5-3. Scheduling and performing interviews

(a) The CFMO and the ADC will convene an interview committee to interview each consultant based on evaluation criteria developed by the CFMO in consultation with the ADC, including for example the following criteria:

(1) How will the consultant staff the proposed project?
(2) What is the consultant's proposed management plan?
(3) What is his previous experience for this project?
(4) Where is he located? How will he reduce travel costs if he is not close to the proposed project?
(5) What are his plans for project control?
(6) What examples of similar projects has he completed within the last five years?
(7) Has a judgment been paid by the consultant on his behalf for liability caused by professional errors and/or omissions in the past five years?
(8) Can the consultant demonstrate financial stability?
(9) Is the consultant properly insured?
(10) Does the consultant labor under any conflicts of interest as addressed at 753:11-1-4?
(11) Any other additional factors?

(b) Within thirty days of the scheduled interviews, each consultant should be notified by letter informing him that he has been selected for an interview. The letter should contain:

(1) Date, time, and place of interview. Interviews should be scheduled individually for each consultant.
(2) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.
(3) A copy of the interview criteria.
(4) The number of the interview committee members.

(c) Consultants will be selected on the basis of qualifications only, and not on the basis of cost. Oklahoma statutes prohibit the release to a third party any information on fees. Any consultant who discloses his fee, or any indication thereof, prior to Negotiation of Contract, 753:11-3-8, shall be removed from consideration.

(d) The interviews are conducted privately with each consultant out of the hearing of other consultants.

(e) At the conclusion of all interviews, the interview committee will rate each, documenting its rationale, and select a consultant. All criteria and procedures used by the committee shall be documented for the record.

753:11-5-4. Negotiation of contract

(a) Following the interview committee's work, the CFMO or designee will contact the selected consultant and negotiate a contract. This is the first time that a discussion regarding the negotiation of fees may take place.

(b) The CFMO will request a letter from the selected consultant detailing the cost proposal with a breakdown of costs.

(c) The consultant shall develop his fee proposal and return it to the CFMO. Fee proposals shall be based on the consultant's cost to produce the work along with projected expenses and a fair profit not to exceed 15 percent.

(d) The fee will be expressed as a firm fixed price fee according to an agreed scope of work, or may be based on a time and expense basis with a "not-to-exceed " cap. After a fee has been determined, the consultant will be asked to modify the proposal to reflect the agreed upon scope of work and fee, which modified proposal shall then become part of the contract.

753:11-5-5. Award of contract

Contracts may be standard or non-standard depending on the project. Services may include all or any of the following depending on the size and type of project.

(1) Program planning, which may include the following:

(A) Space plan.

(B) Written and/or graphic program document as specified.

(C) Circulation allowances.

(D) Cost estimate.

(2) Schematic design, which may include the following:

(A) The line drawing and graphic representation of the floor plan, perspective drawings, and site orientation of the project.

(B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.

(C) Cost estimate.

(3) Design development. A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:

(A) The site plan for parking, street and pedestrian access.

(B) Overall dimensions.

(C) Rooms and traffic circulation within the buildings.

(D) Types of materials.

(E) Building elevations.

(F) Building sections.

(G) Recommended structural systems.

(H) Recommended mechanical systems and equipment based upon life cycle studies.

(I) Cost estimate.

(4) Construction phase services. The consultant may be required to perform specific construction phase services which include:

(A) Review and approval of shop drawings.

(B) Review and approval of pay requests.

(5) All standard contracts shall include a reference to construction monitoring which is periodic visits at intervals appropriate to the stage of the contractor's operations, by the consultant to the construction site to determine that the contractor is following the intent of the construction contract.

(6) Changes to the consultant's base contract may be approved by the CFMO as long as the scope of the change is generally included within the project description developed at 753:11-5-2(a) for which the consultant selection process was conducted. Changes must reference the correct contract and include the scope of the change, the fee for the change, and the source of the funding for the change. Changes to the consultant's base contract shall not result in fees that would exceed the caps set by 753:11-5-4(c)-(d).

753:11-5-6. Professional services contracts

As indicated at 753:11-1-3(c), engineers, architects, and land surveyors shall be based upon their professional expertise and qualifications with their fees being negotiated after selection, and shall not be required to bid their contracts.

SUBCHAPTER 7. CONSTRUCTION

753:11-7-1. Bid solicitations

(a) **Construction projects over $50,000.** Construction projects over $50,000 will be advertised in a newspaper of general circulation for two consecutive weekly issues of said newspaper with the first publication at least twenty (20) days prior to the day set for bid opening. Notice must also be provided to one in-state trade or construction publication, with publication of that information left to the discretion of that publication. No work shall be commenced until a written contract is executed and all required bonds and insurances have been provided by the contractor. [61 O.S. § 104]

(b) **Construction projects under $50,000.** Construction projects under $50,000 will not usually be advertised. The Trust shall develop a written, clearly defined scope of work with detailed requirements for the project. The Trust will then solicit bids by directly contacting three (3) or more contractors.

(c) **Minor Maintenance or Repair.** The Trust may award small projects below $5,000 to any qualified vendor. A written contract and proof of insurance is required prior to issuing the vendor a notice to proceed.

(d) **Emergency Projects.** When the CEO determines that an emergency situation exists, a contract may be awarded without competitively bidding it to correct the emergency condition.

753:11-7-2. Bid documents

(a) **Solicitation notice.** The solicitation notice will contain:

(1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.

(2) The location where a complete set of bidding documents may be obtained.

(3) The date and time for the MANDATORY site visit, if applicable. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.

(4) The location and time for the pre-bid conference if applicable. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.

(5) The date, time and place of the opening of bids.

(6) The name and address to whom competitive, sealed bids must be submitted.

(7) If applicable, any pre-qualification requirements pursuant to 61 O.S. § 118.

(8) Other information deemed of benefit to the public or prospective bidders.

(b) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any other source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the ADC to all bidders of record.

753:11-7-3. Bid submittal

(a) **Bid preparation.** Bids must be prepared in accordance with any instructions provided in the solicitation.

(b) **Competitively-Bid Projects.** Competitive bids cannot be submitted by telephone, email, or fax machine. Competitive bids may be delivered in person, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays, and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled bid opening at the time and day specified in the bid documents. Each envelope shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. The following information must be placed on the outside of each sealed bid envelope:

(1) Company name and address.

(2) Description of project.

(3) Project number and trade, i.e. 10 HVAC.

(4) Closing date and time.

(c) **Non-Competitively Bid Projects.** For projects under $50,000, written bids shall be received as indicated in the solicitation, which may permit the submission of bids electronically. Before a construction contract shall be awarded, the following must be assembled:

(1) A properly signed requisition form.

(2) Three (3) or more original written bids, when possible, including any declined bids, signed by the bidders.

(3) Scope of work with detailed requirements.

(4) Acceptance letter to award the contract.

753:11-7-4. Modifications/withdrawal of bids

Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail or delivered in person. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented. A bid to be withdrawn shall not be opened and shall be returned upon request of the bidder at the conclusion of the bid opening.

753:11-7-5. Bid openings

The bids are opened by the CFMO or his designee at the date and time specified in the announcement in the following manner and recorded by an assistant. Bid openings are open to the public and to all bidders.

(1) The bidder's name is announced.

(2) The bid is checked for completeness and correctness. Any of the following deficiencies may be grounds for disqualifying the bid:

(A) The bid must be signed.

(B) The Non-Collusion Certification must be present, signed, and properly notarized.

(C) If the total bid exceeds $50,000, a certified check, cashier's check, bid bond or bid letter of credit for 5 percent of the base bid price and the price of all alternate bids must be present.

(D) All equipment lists, selected materials, or other information when required by the specifications must be present.

753:11-7-6. Bid review and evaluation

(a) At the conclusion of the bid opening, bids will be reviewed and tabulated, and their contents verified. The following items are reviewed: Insurance carriers, bonding companies, and surety companies used to issue bonds and insurance must be registered to do business in Oklahoma and prequalified as good and sufficient by OMES.

(1) Verification of bid contents.

(2) When there is a variance between the amount in words and the figures, the amount in words shall govern.

(3) Bids containing omissions, alterations, additions, or conditions not called for, or containing a clause in which the bidder reserves the right to accept or reject a contract, shall be disqualified.

(4) The ADC may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work; and, if there is reasonable doubt that the bid will result in the lowest overall cost to the Trust even though it may be the low evaluated bid; or, if it is so unbalanced as to be tantamount to allowing an advance payment.

(5) Failure to submit unit prices for any requested work item shall cause the bid to be disqualified.

(b) Before a contract may be awarded to a bidder, the bidder's ability to perform the required work is considered. The

Trust may require bidders to pre-qualify pursuant to 61 O.S. § 118 to determine the responsibility of bidders.

753:11-7-7. Contract award

(a) Bids are awarded on a lowest and best or Best Value criteria basis as indicated on the solicitation notice. If an award is made to other than the lowest bidder, the Trust shall prepare a statement setting forth the reason for its action and place that statement on file, open to public inspection. [61 O.S. § 117] The Trust will provide a copy of the contract to the successful bidder who shall be given a specific period of time, as outlined in project specifications, but not to exceed sixty days,. [61 O.S. § 113(A)], in which to execute the contract and obtain the necessary bonds and insurance.

(b) Projects over $50,000 require three bonds. [61 O.S. § 113(B)] All bonds required by Title 61 of the Oklahoma Statutes shall be provided by insurance carriers, bonding companies, or surety companies that are prequalified by OMES as good and sufficient in accordance with criteria established by OMES. [61 O.S. § 134]

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material, and repair of and parts for equipment as are used and consumed in the performance of the contract.

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Trust against defective workmanship and materials for a period of one (1) year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Trust against claims or liens from subcontractors or suppliers for services or materials used in the project.

(4) **Letters of credit.** Irrevocable letters of credit may be substituted for the bonds listed, but each letter must be for the total value of the contract. Alternatively, a single irrevocable letter of credit may be substituted for the bonds listed.

(c) If no timely bid is received after bid notices have been published on any proposed public construction contract which does not exceed $50,000, the Trust may negotiate the contract with a prospective contractor. The contract will be executed within six months after the date initially set for opening bids, and the work to be performed shall be as specified in the initial bidding documents. [61 O.S. § 119.1]

(d) Public liability and workers' compensation insurance in reasonable amounts shall be required for all projects, regardless of project size. the Trust may require the contractor to name the Trust and its architects or engineers, or both, as an additional insured under the public liability insurance, which requirement, if made, shall be specified in the bid documents. [61 O.S. § 113(B)(4)]

(1) Proof of workers' compensation insurance shall be required for all projects exceeding $50,000. The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(2) For projects less than $50,000, a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance.

(3) Additional forms of insurance or increases in the insurance amounts may be required. Any additions or increases shall be contained in the bid documents.

753:11-7-8. Pre-construction conference

Shortly after award of a contract, the Trust may, at its discretion, schedule a pre-construction conference. This meeting may include, when applicable, the Design Consultant, general contractor, a representative of the ADC and/or the CFMO, and other interested parties. The CFMO or his representative shall chair the meeting. The purpose of the meeting shall be to discuss the requirements and responsibilities of the various parties involved with the objective of expeditious handling of the construction contract.

753:11-7-9. Construction conference

(a) A construction conference may be called periodically by, when applicable, the CFMO or his designee or the Design Consultant to discuss:

(1) Project progress as it relates to schedule.
(2) Payment requests and their status.
(3) Change order requests and their status.
(4) Special problems and remedial action required.
(5) Results of previous remedial action.
(6) Other subjects as required.

(b) The meeting shall be chaired by the CFMO or his designee or the Design Consultant. Minutes of the meeting shall be kept, typed, and distributed to all applicable parties within five (5) working days.

753:11-7-10. Construction requirements; reviews and permits

(a) The Trust facilities shall be constructed, renovated, or improved in such a manner as to provide reasonable safety from fire, smoke, panic, and related hazards and to ensure a high level of health, comfort, and well-being for all occupants.

(b) Building construction, renovation, and improvement will require formal code review and a building permit.

(c) Plans and specifications for the Trust projects shall be reviewed and approved by the AHJ, who shall issue a permit upon approval.

(d) No project shall be awarded until such prescribed reviews are concluded and a building permit is issued.

753:11-7-11. Adopted codes

The Trust construction projects shall comply with all applicable codes adopted by the Oklahoma State Fire Marshal, current at the time the project is initiated; codes adopted by

the Construction and Properties Department, OMES, as identified at OAC 260:65-5-4 and OAC 260:65-5-5; and any other additional codes as required, including but not limited to, for example, the Americans with Disabilities Act and related standards.

753:11-7-12. Payment requests

(a) Partial payments for work completed and materials stored on site may be submitted once each month. A detailed procedure to be followed is shown below:

(1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, and submit it to the CFMO or his designee for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the CFMO or his designee or Design Consultant.

(2) The contractor should meet with the CFMO or his designee and/or Design Consultant when the rough draft of the pay request is prepared to agree on percentages of work completed and finalize the final form. The contractor should furnish the CFMO or his designee and/or Design Consultant with one (1) electronic copy of the pay request and all supporting documents.

(3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable.

(4) If the contractor deems it necessary, and the CFMO or his designee and/or Design Consultant recommend, the contractor may store material off-site. To do so, there must be a written agreement between the Trust and the contractor which provides:

(A) proof of applicable insurance;

(B) a written guarantee of delivery to the job site;

(C) photos; and

(D) written title to all materials covered by the request for payment, which shall pass to the Trust.

(E) For particularly large projects, the Trust may require an on-site inspection of facilities by the CM or Design Consultant to verify the authenticity of quantities of stored materials.

(b) The Certificate of Contract Completion, Consent of Surety, Lien Release, and the Contractor's Warranties must be submitted with the final request for payment.

753:11-7-13. Change orders

(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the CFMO or his designee and/or Design Consultant shall issue a Proposal Request to the contractor. The Proposal Request shall be completed by the contractor and shall fully describe the scope of work explaining completely what each item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials; unit cost, labor, equipment, profit and overhead; and other expense items. The CFMO, in consultation with the ADC, will consider the completed Proposal Request and issue a Change Order if authorized.

(b) When the Proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order. All information required on the form shall be included. The completed Change Order will be signed by the CFMO and/or Design Consultant.

(c) When the change is less than $10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in (a) of this Section is not required.

(d) Awarded projects that have not been competitively bid cannot exceed $50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of $50,000. Cumulative change orders for awarded projects that have been competitively bid cannot exceed 10 percent of the original project bid amount. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total contract price.

753:11-7-14. Time extensions

The contract documents shall contain the basis upon which time extensions may be granted. Substantiating data must be submitted with the requests for extensions. Such time extensions, if justified, shall be granted by Change Order only. It is important that written notices of delay be submitted to the CFMO or his designee and/or Design Consultant within twenty (20) days of the delay. Time extensions for changes in the work must be included on the Change Order form authorizing such change.

753:11-7-15. Substantial completion inspection

(a) This inspection is to be requested by the contractor after he has determined that the project is substantially complete. Substantial completion is defined as the construction is sufficiently completed in accordance with the plans and specifications, as modified by any authorized changes, so that the owner can occupy the building and/or use the facility for its intended use.

(b) After receipt of a list of items to be completed or corrected from the contractor, the inspection is to be scheduled by the CFMO or his designee and/or Design Consultant who shall send out written notification inviting the ADC and other interested persons to attend. After the inspection, the Certificate of Substantial Completion Form with punch list shall be prepared by the CFMO or his designee and/or Design Consultant. A time limit to complete the punch list of deficiencies shall be determined by the Contractor and approved by the CFMO or his designee and/or Design Consultant. Two (2) copies of the form shall be provided to the Trust for signature.

753:11-7-16. Final inspection

This inspection shall occur upon completion of construction and when requested by the contractor after he determines the project is finally complete and all punch list items have been completed. The CFMO or his designee and/or Design Consultant shall send out formal notification inviting the ADC and other interested parties to attend.

753:11-7-17. Contract completion

A Certificate of Contract Completion shall be prepared by the CFMO or his designee and/or Design Consultant. The contractor shall complete the Contractor's Affidavit on all required copies of the Certificate of Contract Completion and return to the CFMO or his designee and/or Design Consultant. The total of the contract shown on the certificate shall include the sum of all change orders. The contractor shall secure and transmit to the CFMO or his designee and/or Design Consultant a completed and notarized Consent of Surety with the contractor's Certificate of Final Payment. All submittals, operating manuals, brochures, as-built drawings, keys, warranties, and all other requirements of the contract shall have been submitted to the CFMO or his designee and/or Design Consultant with signed receipts from the using agency for the items received by them, before final payment is made.

SUBCHAPTER 9. CONSTRUCTION MANAGEMENT/AT RISK

753:11-9-1. Registration of Construction Managers

All Construction Managers desiring to perform services for the Trust must be registered with OMES. Any Construction Manager not registered with OMES at the time the Trust announces a project may register with OMES and submit a letter of interest to the Trust.

753:11-9-2. Project designation consideration

(a) The CFMO in consultation with the ADC shall consider the following three factors to determine whether a construction project merits consideration for use of the construction management delivery system:

(1) The project benefits the public. When considering designation, it shall be clearly evident that Construction Management will provide a public benefit, which may include:

(A) early completion of work, allowing for beneficial public occupancy;

(B) accommodating construction progress with phased funding;

(C) enabling the project to be placed under contract prior to losing expiring funding source; or

(D) other demonstrated public benefit.

(2) There is a need for cost control. When project requirements or technical components of a project are not fully defined, or options are available for building systems, the use of Construction Management would provide valuable input to the design process.

(3) The need exists for specialized or complex construction methods due to the unique nature of the project. Projects shall be considered specialized or complex when they involve sophisticated or complicated technical systems, renovation work, or work that must be completed on a critical time frame, or otherwise when a critical mission may be in jeopardy.

(4) Other factors may include:

(A) **Time constraints on project completion.**

(B) **The Trust's capabilities.** The capabilities of staff and whether staff has the ability and experience to effectively manage a project that utilizes construction management.

(C) **Funding.** The Trust shall demonstrate whether it has adequate funding to pay for services of the construction management firm and construction services.

(D) **Project components.** The construction execution could be enhanced by the services of a Construction Manager.

(b) Upon consideration of the identified factors and based on the recommendation of the CFMO, the CEO may designate the project delivery method as construction management.

753:11-9-3. Selection procedure

(a) **Description of the project.** The Trust shall develop a description of the project which shall include:

(1) A narrative description of the work being planned, including various project components;

(2) The estimated cost and time schedule of the project; and

(3) The source of the funding.

(b) **Request list of Construction Management.** The Trust shall submit a written request to OMES for a list of construction management firms currently registered with the Department.

(c) **Announce project.** The Trust will send a Request for Qualifications (RFQ) to each construction management firm on the list provided by OMES which must include the description of the project and the deadline when letters must be received for consideration.

(d) **Special circumstances.** In special circumstances, the Trust may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management firms.

(e) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:

(1) Procedures for submitting statements of qualification and procedures for making awards;

(2) Evaluation factors to be considered by the selection committee;

(3) A statement of work including the description of the project with any other summary information the Trust deems pertinent;

(4) A schedule for planned commencement and completion of the contract;

(5) Budget limits for construction of the project for which services are being sought; and

(6) Requirements for construction management firms to have bonds and insurance.

753:11-9-4. Selection committee

(a) **Members.** Whenever a solicitation is issued requiring Best Value Methodology as described at Subchapter 6 of this Chapter to determine the successful bidder, the CFMO or designee will assemble the ADC to serve as a Selection Committee.

(b) **Selection Monitor.** The CFMO will designate one member of the Selection Committee to serve as a Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:

(1) schedule and preside over Committee meetings;

(2) provide instructions to Committee members on the Best Value methodology for evaluation and rating of bid submittals;

(3) tabulation of the evaluation scores;

(4) review the Committee's rating results for dominant information and/or inconsistencies;

(5) discuss evaluations with Committee members to seek clarifications, if necessary;

(6) prioritize the final rating score;

(7) assist the Committee in determining the highest ranked firms for further consideration in interviews;

(8) assist the Committee in determining the apparent Best Value firm; and

(9) assisting with the Clarification Period activities.

(c) **Construction management interviews.** The Selection Committee shall select a competitive number of the best qualified construction management firms for interviews. When possible, a minimum of three (3) firms constitute a competitive number.

753:11-9-5. Scheduling and performing interviews

(a) All members of the interview committee shall participate in all interviews of each firm.

(b) An evaluation criteria list shall be developed to ensure that each firm is evaluated against a clearly established list of criteria made available to the firm at least seven (7) days prior to the interview. All interviews will be conducted identically. Evaluation criteria may include, but is not limited to, the following:

(1) Specialized experience and technical competence of the firm regarding the type of services required;

(2) Capacity and capability of the firm, including any consultants, to perform the work, including any specialized services, within the stated time limitations of the project;

(3) Past record of performance on contracts with government agencies or private industry with respect to control of costs, quality of work, and ability to meet schedules;

(4) Proximity to or familiarity with the area in which the project is located;

(5) The volume of work previously awarded by the State to the firm; and

(6) Any other factors that are relevant to the project as determined by the Trust.

(c) Questions concerning fees shall not be asked. Oklahoma law prohibits the requesting of any information on fees at this stage of the process. Any firm that discloses its fee, or any indication thereof, shall be removed from consideration. Construction management firms will be selected on the basis of qualifications and not on a financial basis.

(d) Each firm shall be notified by letter of the selection for interview. The letter shall contain:

(1) Date, time, and place of interview. Interviews should be scheduled individually for each firm;

(2) An indication of how much time the firm shall be permitted for the presentation and how much time shall be reserved for questions by the committee;

(3) A copy of the interview criteria; and

(4) Any other information which would help the committee to obtain information needed for them to properly evaluate the firm.

(e) Interviews must be conducted privately with each firm.

(f) At the conclusion of all interviews, the committee shall rate each firm so as to recommend to the Trust the relative ranking of each firm. All criteria and procedures used by the committee shall be documented for the record.

753:11-9-6. Fee negotiation and contracts

(a) Once the highest-ranking construction management firm is selected, the Trust shall request a fee proposal from the firm.

(b) Upon receipt of the written fee proposal, the Trust shall negotiate a contract including fees.

(c) In establishing the construction management fee, the Trust shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services.

(d) In the event the Trust is unable to negotiate a satisfactory contract with the selected firm, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Trust shall then undertake negotiations with the firm ranked second, beginning with a formal request for a fee proposal from that business. Failing accord with the second firm, the Trust shall formally terminate negotiations with that firm. This process shall continue, with proposals received from and negotiations held with the next ranked firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.

(e) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the scope and duration of services.

(f) For Construction Management/At-Risk, there are essentially two phases of the contract:

(1) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the Construction Manager up to the point at which the design is far enough along for the Construction Manager to establish a Guaranteed Maximum Price (GMP). The point in time when

the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the Construction Manager are the Construction Manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.

(2) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. The Trust will signal a move into Phase Two through issuance of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the Construction Manager and, if applicable, the Design Consultant. The Construction Manager will work in conjunction with the Design Consultant, if applicable, to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.

(g) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100 percent performance, payment, and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(h) Non-approval of the GMP allows the Trust to terminate the services of the Construction Manager or to renegotiate, as required.

(i) When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the Construction Manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with Subchapter 3 of this Chapter. Thus, in administering the construction contract, the Construction Manager will adhere to the competitive bidding requirements for advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(j) Because the Construction Manager is "at risk" for the total contract amount, the Construction Manager is permitted to self-perform portions of the work, provided that the work is competitively bid as a lump sum (each work package) under the same terms and conditions as the other bidders. The Trust must be notified of the Construction Manager's intent to bid a work package during each pre-bid meeting held to discuss outgoing bid packages or otherwise in writing to the CFMO.

(k) When individual work packages are bid as a lump sum, the Construction Manager's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the Construction Manager's contract becomes all lump sum.

(l) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the Construction Manager and the Trust must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Trust may allow an adjustment to the GMP in order to allow the Construction Manager to award all work packages.

753:11-9-7. Award of contract

The construction management contract shall be written and included in the project file.

753:11-9-8. Changes to base contract

Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed for which the selection process was conducted. All changes shall be in writing and signed by all parties to the contract.

SUBCHAPTER 11. BEST VALUE METHODOLOGY

753:11-11-1. Best Value vendor selection

The Best Value vendor selection and project delivery process consists of three primary phases:

(1) **Phase 1.** Vendor selection.

(2) **Phase 2.** Clarification period, which includes but may not be limited to:

(A) agreement on scope;

(B) description of services using performance measurements, if applicable; and,

(C) creation of contract requiring a Risk Report, Risk Management Plan, and all applicable legal terms and conditions.

(3) **Phase 3.** Management, which requires:

(A) the vendor to manage and control the project system to make reports to the Trust; and

(B) the Trust to perform project quality assurance by ensuring the vendor is using a quality control plan and through periodic inspection.

753:11-11-2. Vendor selection

Phase 1 uses a series of filters to identify which bidder provides the most value. For Construction Management/At Risk contracts, for example, Subchapters 753:11-9-1 through 753:11-9-5 reflect Phase I vendor selection and should be read in tandem with this Subchapter. On or before the date stated in the solicitation, vendors submit documentation requested in the solicitation or bid documents information that will be evaluated, rated, and/or weighted, which may include, but is not limited to:

(1) **Past performance information.** The vendor submits performance information collected from past customers about past projects/services the vendor has completed.

(2) **Project capability.** The vendor submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, financial stability, proper insurance, the absence of any conflict of interest as such conflicts are addressed at 753:11-1-4, technical capability, documented performance measurements, vendor's ability to provide additional value, and pricing information as required by the solicitation.

(3) **Interviews.** The Selection Monitor will schedule interviews with representatives of selected firms as designated by the Selection Committee. The interview provides a forum for the vendor to discuss the project and answer questions concerning the ability to deliver the project/service.

(4) **Prioritization.** After completion of (1) through (3) of this Section, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each vendor.

(5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value vendor.

753:11-11-3. Clarification period

(a) The identified apparent Best Value vendor is invited to participate in the Clarification Phase. Only one firm at a time may be invited to participate. The clarification period is not a contract negotiation. This period is the final 'filter,' and the invited firm may still lose the project. Once invited to the clarification period, the vendor is responsible for scheduling and management of the related activities. The objective is to:

(1) ensure the vendor understands the project scope;

(2) allow the vendor to clarify how they will deliver the project/service on time;

(3) identify the accountabilities of other parties; and

(4) explain how the vendor will mitigate and manage any risk the vendor does not control.

(b) The vendor is responsible for understanding the project requirements and expectations.

(c) To complete the clarification phase, the vendor conducts required meetings, identifies specific requirements and provides relevant documents, which may include but is not limited to, the following:

(1) Executive Summary;

(2) A critical milestone schedule that includes the clarification period, the award, project/service delivery, and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;

(3) Identify all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how the Construction Manager will satisfy those concerns;

(4) Make any additional investigations as warranted;

(5) Provide a listing of major sub-vendor and suppliers. Ensure that any sub-vendors have a complete understanding of the project and have no technical or non-technical questions or concerns;

(6) Identify activities where the vendor will experience situations where there may be a lack of information, where un-foreseen conditions may exist, and activities where the vendor has no control over other participants or required activities in the delivery of the service.

(7) Identify and document in writing any value-added ideas the Trust has accepted or rejected, along with corresponding adjustments to the contract terms;

(8) A project plan including any final clarification of the proposal and any omitted information and identification of value-added provisions accepted by the Trust;

(9) Validation that the proposal is accurate and complete prior to submitting the final project scope;

(10) Develop a Risk Report template to communicate accountabilities and deviations, beginning with the clarification period;

(11) Develop a Risk Management Plan, which includes any risks the vendor does not control and how the vendor will mitigate or minimize those risks should they occur;

(12) Identify a performance measurement plan to communicate to the Trust how the vendor is performing during the project duration; and

(13) Provide assurances to satisfy any remaining project concerns that the Trust may have, including but not limited to adverse publicity; noncompliance with local, state, or federal law; safety and accident prevention or other risks within the control of the vendor that would cause unnecessary time-and-effort transactions by the Trust.

(d) If the bidder determines the proposal contains errors or the proposal is inaccurate, the bidder may withdraw the project proposal, but the bidder shall be prohibited from modifying the proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the CFMO.

(e) The vendor must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized, and suitable for attachment to a final negotiated contract.

(1) The final clarification meeting is not a question and answer session.

(2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Trust must be conducted prior to the clarification meeting.

(3) The bidder makes a clarification meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Clarification Phase.

(f) The Clarification Phase is the final selection filter. If at any time during the Clarification Phase, the Trust determines progress being made by the invited bidder is unsatisfactory, the Trust may terminate Clarification Phase activities with the invited bidder. The Trust may then commence a new Clarification Phase with the next highest ranked bidder.

753:11-11-4. Risk minimization and performance

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality, or project schedule caused by the vendor, the Trust, unforeseen conditions, or other parties. The Phase consists of, but is not limited to, a Risk Report detailing information provided by the Construction Manager, which may include:

(1) all key contact information;
(2) project milestone schedule;
(3) risk sheet;
(4) modification/deviation tracking;
(5) Risk Management Plan;
(6) any risks the Trust may require the vendor to document that could impact satisfaction; and
(7) performance measurements.

(b) The Construction Manager shall submit a Risk Report for the project/service weekly throughout the contract, or as otherwise required by the CFMO.

753:11-11-5. Transparency and Best Value documentation

(a) To protect the integrity of the selection process and fairness to bidders, the following will remain confidential as stated:

(1) Identities of individual bidders will not be revealed to voting members of a selection committee during evaluation of key submittals as identified in the solicitation until such time as the highest rated bidders are identified and advanced to the oral interview or award phase.

(2) To preserve integrity in the event a re-bid is necessary, contents of the individual bidders' submittals shall not be open to public inspection until such time as the contract award is made.

(3) A bidder shall clearly identify any information submitted in a response to a solicitation that the bidder considers confidential or proprietary and shall submit such clearly-identified information in a separate envelope. The CFMO shall review the information and may or may not designate the bidder's information as proprietary or confidential and may or may not reject requests to disclose the information so designated.

(b) Following the contract execution, all selection process documentation not otherwise protected will be available to the public for inspection.

753:11-11-6. Other requirements for contracts awarded using Best Value methodology

(a) 753:11-11-2 and 753:11-11-5 may apply to any contract awarded by the Trust using Best Value methodology to select the successful vendor.

(b) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.

(c) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the CFMO. Components of the plan must, at a minimum, include the following provisions:

(1) Bid Notices: method of making uniform public notification to interested subcontractors and suppliers;

(2) Availability of bid documents for inspection or acquisition by interested bidders;

(3) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.

(4) Method of evaluation of bid documents to determine final recommended contract awards.

(5) Method of public access to pricing, scoring, and final award information.

SUBCHAPTER 13. SUPPLIER PROTESTS

753:11-13-1. Supplier notification

A supplier may protest a contract award to the CEO of the Authority by submitting written notice to the CEO within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons for the protest. The CEO shall forthwith notify the supplier awarded the contract of the protest. Any ex parte contact with the CEO by the supplier protesting the award and the supplier awarded the contract is prohibited while any matter relating to the protest is pending. The CEO may enter an order by letter, staying contract performance upon such terms and conditions as the CEO determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced. The CEO shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.

753:11-13-2. Review and determination

The CEO shall review the supplier's protest and contract award documents and shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.

753:11-13-3. Supplier appeal of decision to deny protest

If the CEO denies the protest, the supplier protesting the award may appeal a denial of protest by filing, within ten (10) business days of the date of the CEO's notice of denial, a written appeal, setting forth all the relevant facts and reasons for the appeal.

753:11-13-4. Determination

The CEO shall assign the supplier's appeal to an Administrative Law Judge who shall be a licensed attorney retained by the Trust. The Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact, conclusions of law, and a proposed order to the CEO. The CEO shall determine a final order and send written notice of the final order sustaining or denying the supplier's appeal to the parties. The cost of actions necessary for the Trust to process a supplier's appeal, together with any other

expenses incurred by the Trust due to the appeal, shall be paid by the Trust.

753:11-13-5. Administrative procedure

Administrative hearings shall be conducted in accordance with the following procedures:

(1) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest.

(2) **Burden of proof.** The burden of proof shall be upon the protestant, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) **Evidence.** The Administrative Law Judge shall give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by Oklahoma law for civil proceedings. Parties may conduct cross examination of witnesses required for a full and true disclosure of facts. Notice may be taken of judicially cognizable facts.

(4) **Representation.** Corporations may be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(5) **Proper parties.** In addition to the supplier protesting the contract award, the supplier awarded the contract and the Trust may participate in the bid protest proceedings as proper parties.

(6) **Discovery.** Discovery shall be permitted as determined by the Administrative Law Judge.

(7) **Testimony.** All testimony, either at depositions or at a hearing, shall be under oath or affirmation.

(8) **Official record.** The Trust shall employ a certified court reporter, whose transcription of the hearing and any related matters, together with all pleadings, motions, and other documents submitted or considered during the proceedings shall constitute the official record of the protest.

(9) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions;

(D) Require briefing of any or all issues;

(E) Conduct hearings;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses;

(H) Make proposed findings of facts, conclusions of law and a proposed order to the Chief Executive Officer; and

(I) Take other lawful actions necessary and proper in the interests of justice.

753:11-13-6. Remedies

The Administrative Law Judge may recommend in a proposed order that the Chief Executive Officer deny the supplier's appeal, that the contract be awarded to the protesting supplier, that the contract award be cancelled and rebid, or for such other relief as the facts and law warrant.

753:11-13-7. Decision to be final

The CEO shall make a final determination as evidenced by a final order. Final orders are not subject to administrative appeal.

[OAR Docket #19-685; filed 6-26-19]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #19-697]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Local Programs, or Instructional Positions: Application; Student Accounting; Evaluation
780:10-7-3 [AMENDED]
AUTHORITY:
Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019 through March 20, 2019
PUBLIC HEARING:
March 28, 2019
ADOPTION:
March 28, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The proposed rule amendment clarifies the agency's ethics policy for accreditation evaluations.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 7. LOCAL PROGRAMS, OR INSTRUCTIONAL POSITIONS: APPLICATION; STUDENT ACCOUNTING; EVALUATION

780:10-7-3. Institutional Standards; accreditation; review

(a) **Quality standards.**

(1) **Establishment; funding.** As appropriate, quality standards shall be established by the State Board for postsecondary and secondary CareerTech institutions, programs, courses and/or services. These standards shall be comprehensive, reflecting state and federal mandates as they relate to quality CareerTech education. Funding approval is contingent upon meeting quality standards or making satisfactory progress toward meeting those standards.

(2) **Standards.** Standards shall include the following:

(A) STANDARD I-Leadership and Administration
(B) STANDARD II-Instruction and Training
(C) STANDARD III-Support Services
(D) STANDARD IV-Measurement and Analysis
(E) STANDARD V-Personnel
(F) STANDARD VI-Operations
(G) STANDARD VII-System Impact

(3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of CareerTech education. Any such revisions will be taken to the State Board for approval.

(4) **Dissemination.** The standards will be disseminated to CareerTech personnel throughout the state. Evaluation results will be considered in the processes of planning and funding programs.

(5) **Technical assistance.** The Department staff will provide technical assistance to help CareerTech institutions, programs, courses, and/or services meet the standards established by the State Board and other accrediting agencies.

(b) **Postsecondary accreditation.**

(1) **Approval/accreditation agency.** For the purpose of determining eligibility federal student aid (FSA) programs administered by the U.S. Department of Education, the Oklahoma State Board of Career and Technology Education is recognized as the authority for the approval of public postsecondary vocational education offered at CareerTech institutions in the state of Oklahoma that are not offered for college credit or under jurisdiction of the Oklahoma State Regents for Higher Education, including the approval of public postsecondary vocational education offered via distance education.

(2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed in the publication **Accreditation Guidelines.** This publication shall be made available to interested parties from the Department.

(A) **Self-Study, Onsite Visit, and Monitoring.** Accreditation status is reviewed through monitoring annually. Every five years, a technology center must complete a self-assessment application and examiners must conduct an onsite visit. State agency staff shall visit the institution, as applicable, following the onsite visit review to ensure that the technology center's corrective action plan(s) are being followed. In addition, ODCTE staff will conduct a monitoring visit during year 3 of the accreditation cycle.

(B) **Publication and Reevaluation.** The accreditation status of the education institution must be publicized in an official notification. Technology centers must be reevaluated at least every five years.

(C) **Ethics.** The school must demonstrate it has enforceable written policies and procedures in place that demonstrates its ethical practices by showing that it has a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services.

(3) **Noncompliance of corrective action plan.** The State Board shall have the authority to assume the administration and supervision of any technology center that after being placed on "Probational Accreditation Status" continues to be in noncompliance of the corrective action plan(s) as approved by the State Board.

[OAR Docket #19-697; filed 6-27-19]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. TECHNOLOGY CENTERS

[OAR Docket #19-698]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Technology Centers Education
780:15-3-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019 through March 20, 2019
PUBLIC HEARING:
March 28, 2019
ADOPTION:
March 28, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
This proposed rule amendment will update agency policy regarding approval of technology center capital improvement projects, and accommodations for individuals with disabilities, and will clarify the agency construction project approval procedure, and will clarify standards used to provide accessible facilities for persons with disabilities.
CONTACT PERSON:
Marie Saatkamp, Human Resources Specialist, Oklahoma Department of CareerTech, 1500 W. Seventh Ave., Stillwater, OK 74074, 405-743-5455, marie.saatkamp@careertech.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION

780:15-3-2. Establishment/Sustainment of a technology center district; sites and buildings

(a) **Establishment.** A technology center district shall be established in accordance with the steps outlined in this section.

(b) **State Board study of proposed technology center district.**

(1) **Proposed district study.** The State Board, upon request of the public school(s) within a proposed district, board of county commissioners, or citizens within a proposed district, shall make a study of the proposed district in regard to the following factors:

(A) Size;
(B) Total population;
(C) Assessed valuation;
(D) Current school enrollments;
(E) Estimated secondary school enrollments;
(F) Estimated full-time adult enrollments;
(G) Other information pertinent to determining the feasibility of a technology center district.

(2) **Costs.** The study shall also include building and equipment costs, as well as estimated annual operating costs.

(3) **Sharing of study information.** The information compiled as a result of the study shall be shared with the local schools and/or county commissioners and other interested persons within the proposed technology center district.

(c) **State Board determination of technology center feasibility.**

(1) **Decision by State Board.** After a study of the proposed technology center district has been completed and reviewed by the interested and affected schools and/or county commissioners, a decision will be reached as to the course of action to be taken. The State Board shall finally determine if the proposed technology center district meets the criteria and requirements prescribed, if there is a need for the district, and if the operation of the district can be adequately funded.

(2) **Valuation of district; waivers.** A proposed technology center district shall have a minimum valuation of $100,000,000 after homestead exemptions. In situations involving low valuations and/or sparsely populated areas where this requirement is not feasible, the State Board, upon presentation of sufficient justification, may give special permission to waive the minimum criteria.

(d) **Presentation of resolutions.**

(1) **Resolutions signees.** If the State Board determines the proposed technology center district is feasible and needed, resolutions shall be presented to the State Board signed by:

(A) Local boards of education of districts desiring to become a part of a technology center district,
(B) A majority of the membership of a board of county commissioners, or
(C) A combination of (A) and (B) of this subsection where there exists a county and school districts outside that county desiring to become a part of the same technology center district.

(2) **Cooperation.** The State Board shall work with the area in order to establish a district that is feasible and will fit into its state plan.

(3) **Established school districts.** The State Board shall protect the attendance area of established technology centers and not approve any part of an existing technology center district for inclusion into a new area district unless that area cannot be served adequately by the existing technology center (Deannexation proceedings may have to be followed first.)

(e) **Technology center district formation election.**

(1) **Call for election.** The State Board shall call an election in each district submitting a resolution, or in each district within a county submitting the resolution, if a technology center district is found to be feasible and needed.

(2) **Election.** An election will be held in each independent and elementary school district, and/or entire county, having territory that would be included in the proposed technology center district, for the purpose of permitting electors of the district to vote on the question of whether the territory comprising the independent or elementary school district, and/or entire county, shall be included in the proposed technology center district.

(f) **Elections relative to the creation of new technology center district (general rules).** The rules of this subsection shall be used for conducting elections relative to the creation of a technology center district, electing the initial board of

education, voting the initial operating levy, and for annexation of an independent or elementary school district to an existing technology center district.

(1) **Election date.** The State Board with advice and counsel of local boards of independent and elementary school districts and/or county commissioners shall designate the date on which an election shall be conducted.

(2) **Responsibilities of county election board; State Board.** The State Board shall cooperate with the county election board designated to conduct the election. The county election board shall receive notice from the State Board and shall conduct the elections in the school district at the time specified by the State Board. The State Board shall prepare the publication notice and submit it to at least one newspaper of general circulation in each county officially calling the election, stating the purpose of the election and listing the polling places in the county. The State Board shall assume the cost of such publication.

(3) **Forms.** All forms to be used in technology center district elections will be provided by the County Election Board.

(4) **Hours.** The polls for election shall be open from 7 a.m. until 7 p.m.

(5) **Certification of results.** The county election boards shall, when appropriate, certify to the local school boards the results of an election. The county election boards shall certify to the State Board, also, the results of any election pertaining to the creation of a new technology center district, the initial board of education election, and the initial operating levy election.

(6) **Costs of elections.** When holding the election for the creation of a technology center district, the election of the original board of education, and the election for the first operation levy, the cost for these elections will be borne by the State Board.

(7) **Annexation election costs.** Annexation election costs of individual independent and elementary school districts will be borne by the State Board.

(g) **Formation election results determination.**

(1) **Election results.** Results of the election for the formation of a technology center district shall be submitted to the State Board and each school district involved. If the results of the election satisfy the criteria for the formation of a technology center district, the State Board may declare the district formed.

(2) **Election results from resolutions from school districts.**

(A) **Inclusion in the proposed district.** The territory comprising an independent or elementary school district shall be included in the proposed technology center district if a majority of the electors who voted cast ballots in favor of the question.

(B) **Establishment after an unfavorable vote.** Notwithstanding an unfavorable vote in an independent or elementary school district(s), a technology center district may be established and the territory comprising other independent and elementary school districts in which the votes have been favorable may be included in the technology center district, if criteria prescribed by the State Board can be met.

(i) **Study of election results.** The State Board shall study the results of the elections to determine if a sufficient number of the school districts voted in favor of becoming a part of a technology center district. If the area is deemed sufficient, the State Board shall form the district.

(ii) **Valuation; reconsideration of districts.** If the valuation of the area that voted in favor of the proposition is not sufficient to form the district, the State Board shall continue to work with the proposed area; and if the school districts that were opposed to becoming a part of the technology center district wish to vote again on the proposition, they may do so by presenting another resolution to the State Board.

(C) **District establishment suspension; second election.** If the criteria cannot be met because of unfavorable votes in one or more independent or elementary school districts, the State Board may hold establishment of the proposed technology center district in suspension for a period not to exceed one year, and in the meantime may, but no sooner than after ninety (90) days, at the request of the local board of education where the election failed, call another election on the same question.

(3) **Election results from resolutions by a majority of a board of commissioners.**

(A) **Voters.** The majority of the votes cast in the county shall determine whether the territory of the county becomes a part of a technology center district. The electors residing in any portion of a county that is already a part of an existing technology center district shall not be allowed to participate in this election.

(B) **Electors in adjoining county.** A local school district that has its main buildings within the county calling the election but has electors residing in an adjoining county should pass a resolution for that part and present it to the State Board, which shall call an election as provided in these rules and regulations.

(C) **Addition of adjoining county electors to the technology center district.** If the majority of the voting electors in the county vote to establish a technology center district, then that part of the local district located in the adjoining county shall become part of the new district, provided a majority of those voting cast ballots in the affirmative, and they shall be entitled to the rights and privileges and be subject to the assessments as are all other patrons in the district.

(D) **Second election.** If the election fails, the State Board may call another election in the county at the request of the county commissioners after a period of three months or 90 days has elapsed since the previous election.

(4) **Declaration; number designation.** Whenever there has been a compliance with these rules and regulations, the State Board may issue an order declaring the

technology center district to be established and designating its number.

(5) **Validation period.** Results of school districts and/or counties that voted to become a part of a technology center district shall be held valid for a period of 12 months, or one year, to allow time for the passage of an operational mill levy election.

(6) **State Board approval of sites and additional campuses.** The State Board shall approve the location of a site for an official campus of a technology center district. If the campus employs a minimum of five full-time instructors who are teaching programs that have been approved by the Department, then it may be recognized as an official campus and will be eligible for funding under a formula approved by the State Board. Branch campuses may be established by the technology center board of education to serve special needs or remote areas of the district. In the event the local board elects to pursue an additional campus at a site other than the existing pre-approved campus, prior approval must be granted by the State Board. Factors that will be used in determining approval will include, but not be limited to, student travel time to the nearest available technology center campus, district valuation, student enumeration, and local industry needs.

(h) **Zoning of the new technology center district.**

(1) **Advisement.** When the State Board forms a technology center district, it shall then divide the district into board districts with the advice and counsel of the local school districts.

(2) **Five board districts.** After consultation with the local school officials, the State Board will divide each technology center district into five numbered board districts of approximately equal population.

(i) **Election of members to the board of education of the new technology center district.**

(1) **Call to elect members.** When a technology center district is established, the State Board shall call, and the appropriate county election board(s) shall conduct an election to choose a board of education, which shall consist of five (5) members except as hereinafter provided, elected by all of the school district electors of the technology center district.

(2) **Composition of board.** Candidates for board district offices of the board shall be residents of the board district. Electors shall vote on all candidates in board elections.

(3) **Terms.** The newly elected board members will serve initial terms as follows:

(A) Office Number 1, Board District 1: One year
(B) Office Number 2, Board District 2: Two years
(C) Office Number 3, Board District 3: Three years
(D) Office Number 4, Board District 4: Four years
(E) Office Number 5, Board District 5: Five years

(4) **Cycle of elections; terms.** At the first regular school election, as prescribed by the state statutes, after the technology center district has become operative for one year, an election shall be held to fill the office that expires in one year. The terms of other offices shall expire in the sequence noted in the schedule above. After the initial terms of offices expire, each school board member shall be elected for a five-year term.

(5) **Notification and declaration of intent.** Each candidate shall file a written notification and declaration of intent to be a candidate for the board district in which he/she resides or as a candidate-at-large. The notification and declaration of intent shall be filed with the county election board within the time prescribed by the election board.

(6) **Seven-member board.** In the event the total area of five or more counties is involved, a seven (7) member board of education may be elected to serve the technology center district.

(7) **Seven-member terms.** When there are seven board members, they shall be elected in the same manner as board of education members of other technology center districts. The terms of office of members shall be staggered so that the term of office of only one member shall expire each year. Offices shall be numbered one through seven.

(8) **Relations with State Board.** Representatives of the State Board shall meet with the elected board and administer the oath of office, which shall be the same as for boards of independent school districts. The State Board shall provide guidance, direction, and technical assistance to the newly elected board members.

(j) **Operational tax levy election for a new technology center.**

(1) **Call for election.** As soon as practical, and when it can legally do so, after members of the board of education of a technology center district are first elected following the establishment of the district, the board of education shall call an election to vote on an operational tax levy for the district.

(2) **Educational plan.** The elected board of the technology center district shall make a study utilizing the services of the State Board and all other agencies that may be at its disposal to determine an educational plan for the district.

(3) **Tax levy.** No technology center district shall begin operations until the electors have approved a tax levy as provided by Section 9B, Article 10, Oklahoma Constitution and 70 O.S § 14-108, as amended, and the county excise board has approved an "Estimate of Needs" for the district or in compliance with the School District Budget Act in 70 O.S. §5-150, et.seq., as amended.

(4) **Second election.** If an election for an operational levy is held and the proposed levy fails to receive a majority of the votes cast, a second election will be held within 180 days after the original election for the purpose of voting again on an operational levy. A second election must be requested by the technology center board and approved by the State Board.

(5) **Dissolution of district; board.** The State Board has the authority to disband a newly formed technology

center district, release the board of education of its obligations, and release all public school districts from any obligation in the new technology center district when an operational levy is rejected by the voters a second time. Disbanding or dissolving a newly created technology center district will be done only after consultation with the local school districts involved.

(6) **School planning.** After passage of a successful operational levy, the technology center board shall employ professional help, engage the services of an architect to plan buildings, and take such action as necessary to establish the technology center.

(k) **Selection of the technology center superintendent.**

(1) **Choice of superintendent.** Following passage of a successful operational tax levy, the local board of education shall employ a technology center district superintendent.

(2) **Duties; qualifications.** The duties and minimum qualifications of technology center superintendents shall be as follows:

(A) **Duties.** The technology center superintendent shall be the principal administrative officer of the technology center. They shall be responsible for the organization, curriculum development, evaluation, and improvement of instruction. The technology center superintendent shall maintain close contact with the employment services, advisory committees, potential employers, and all agencies and institutions relative to employment needs and job opportunities in order that career and technology education instruction may be closely coordinated with current needs and anticipated employment opportunities. They shall evaluate instruction continuously and bring about changes and improvements that will ensure that students will obtain the skills and knowledge for which instruction is being provided. The technology center superintendent shall be responsible for assigning appropriate administrative personnel to evaluate the technology center's certified faculty and determining that such persons have a technology center administrator's credential or the minimum requirement in accordance with 70 O.S. §6-101.10 (6), as amended. In accordance with state law, evaluation duties may be assigned to the principal, assistant principal, designee of the principal, supervisor, content expert, department chair, peer committee or other trained persons or groups designated by the technology center school district board of education. The technology center superintendent shall be responsible for maintaining a system of complete and accurate records and shall make such financial, statistical, and descriptive reports as may be required by the State Board.

(B) **Qualifications.** First, the technology center superintendent shall have a superintendent's certificate as defined by the State Department of Education. Second, the technology center superintendent shall have had at least five years of experience as a Career Tech teacher, supervisor, or administrator. Third, the technology center superintendent shall have a Technology Center Administrator's Credential.

(3) **Issuance of Credential.** The Oklahoma Department of Career and Technology Education shall be responsible for the issuance of the technology center administrator's credential.

(4) **Technology Center Administrator's Credential.** Other school administrators who are responsible for supervision and administration of Department-approved program(s) shall also be required to have a standard or a provisional Technology Center Administrator's Credential as provided for above in 780:15-3- 2(k)(2) & (3) of the rules and regulations governing technology centers.

(A) **Standard technology center administrator's credential.** A person who has superintendent's certificate or a secondary principal's certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator of Oklahoma Department of Career & Technology Education (ODCTE) approved programs shall be issued a standard technology center administrator's credential.

(B) **Provisional technology center administrator's credential, five year.** Applicant shall have a superintendent's or secondary principal's certificate as defined by the Oklahoma State Department of Education. In addition, the applicant must meet at least one of the following experience requirements:

(i) Three (3) years of experience as a Career and Technology Education teacher of an approved ODCTE programs(s) **or**

(ii) Three (3) years of experience as an administrator supervising and evaluating teachers of an approved ODCTE programs(s) **or**

(iii) Three (3) years of experience in an Oklahoma technology center **and** a letter of endorsement from the current technology center superintendent **or**

(iv) Three (3) years of experience at the Oklahoma Department of Career and Technology Education **and** a letter of endorsement from the current ODCTE State Director.

(v) Once the above criteria is met, the candidate shall be issued a provisional technology center administrator's credential and be given **five years** from the date of issuance to complete the following:

(vi) Nine (9) college semester hours and/or 135 ODCTE approved professional development clock hours from the following areas below:

(I) History and Philosophy of Career and Technology Education;

(II) Technology Center Finance;

(III) Career and Technology Education Curriculum; and

(IV) Career and Technology Education Program Planning and Development. A combination of college semester hours and professional development hours can be utilized to fulfill the

requirements. One college semester hour will equal 15 professional development clock hours.

(5) **Requirements for first-year technology center superintendents.** The State Board of Career and Technology Education reaffirms its commitment to provide support and services to new technology center superintendents in Oklahoma. To assist first-year technology center superintendents in the state in providing their respective districts with maximum leadership, effective management, and strong educational programs, the following professional development requirements shall be met by each technology center superintendent employed for the first time in the state of Oklahoma as a technology center superintendent:

(A) Meet qualifications for the Provisional or Standard School Superintendent Certificate.

(B) Meet qualifications for the Provisional or Standard Technology Center Administrator's Credential.

(C) Attend professional development workshops or training seminars equal to eleven days (66 hours) of training:

(i) 1 day: Attend a meeting of the State Board of Career and Technology Education and a board meeting at a technology center where the first-year technology center superintendent is not currently employed.

(ii) 2 days: Attend the Annual CareerTech Summer Conference.

(iii) 2 days: Attend the Annual Technology Center Superintendents June Workshop.

(iv) 6 days: Attend professional development workshops or training in the following general areas:

(I) Superintendent/Board of Education Relationships

(II) Legal Issues/School Law/Open Meeting Laws

(III) Staff Relationships/Due Process

(IV) Community and Industry Relationships

(V) Technology Center Finance

(VI) Plant Management/School Facilities

(VII) Setting School District Site Goals/Strategic Planning/Planning and Implementing Continuous Improvement Strategies for Schools

(VIII) Individuals with Disabilities Act (IDEA)

(v) If a first-year technology center superintendent can provide evidence that within eighteen months prior to being employed as a technology center superintendent, that they have completed one of the training requirements listed above in (iv), the Department will review the documentation and determine if credit should be given for training previously completed.

(D) The Department will provide and/or coordinate, approve and document professional development workshops and/or training seminars for first-year technology center superintendents. If content and method of delivery is approved by the Department prior to a first-year technology center superintendent participating in training, a first-year technology center superintendent may complete some of the training requirements by IETV, on-line training, webinars, or similar methods of delivery. The Department will issue a certificate to each new superintendent who has successfully completed the training requirements for first-year technology center superintendents. A copy of this certificate will be retained at the Oklahoma Department of Career and Technology Education. To maintain certificate validity for second-year technology center superintendents, the Department will provide to first-year technology center superintendents a report showing training completed by first-year technology center superintendents. The Department will continue to collaborate with the Oklahoma State Department of Education regarding emerging issues that in the future may need to be integrated into first-year technology center superintendent training.

(l) **Other actions necessary to establish a new technology center.**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(m) **Approval of capital improvement projects.** After local board approval, all plans and specifications for technology center buildings, additions, including parking lots and modifications designed for CareerTech instruction and/or services shall be reviewed by and approved by appropriate staff of the Oklahoma Department of Career and Technology Education. In addition all capital improvement projects must comply with local building codes and be reviewed by the local and/or state fire marshal~~and the State Department of Education~~. The State Board must grant prior approval of all plans and specifications for technology center school buildings, additions, and modifications to school buildings that are designed to provide for the offering of CareerTech education and services when the cost of the building project is to be paid with state appropriated funds, which includes projects funded with monies from the Educational Lottery Trust Fund, or both local levies and state appropriated funds. (70 O.S. Section 14-108, as amended.)

(n) **Ownership of instructional equipment.** Instructional equipment purchased or reimbursed with state and/or federal funds will remain the property of the State Board except equipment purchased with equipment grants. When instruction can no longer be justified, the State Board may remove the

equipment and transfer it to another technology center, skills center, or place it in the Department service center.

(o) **Insurance and equipment maintenance.** The technology center district shall be responsible for insurance and maintenance and repair of state-owned equipment while it is being utilized in instruction conducted by the district.

(p) **Architect involvement.** Technology center buildings that are to be remodeled, repaired, or constructed shall have an architect engaged in the planning of such building as provided in 59 O.S. §46.3.

(q) **Accommodations for individuals with disabilities.** It shall be the responsibility of the board of education of a technology center district to follow the provisions of the ~~Uniform Federal Accessibility Standards or the~~ Americans with Disabilities Act ~~Accessibility Guidelines for Buildings and Facilities~~accessibility standards when constructing new facilities or altering existing structures.

[OAR Docket #19-698; filed 6-27-19]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #19-699]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
780:20-1-3 [NEW]
Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs
780:20-3-1 [AMENDED]
780:20-3-2 [AMENDED]
780:20-3-4 [AMENDED]
AUTHORITY:
Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, § 14-104
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2019
COMMENT PERIOD:
February 15, 2019 through March 20, 2019
PUBLIC HEARING:
March 28, 2019
ADOPTION:
March 28, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 29, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs
780:20-3-1 [AMENDED]
780:20-3-4 [AMENDED]
Gubernatorial approval:
September 4, 2018
Register publication:
36 OK Reg 17
Docket number:
18-664
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
This proposed new rule clarifies the definition of work-based learning and clarifies the framework for work-based learning. The proposed amendment adds updated language to promote national best practices, promotes the need for an advisory committee for technology centers' guidance and counseling programs and provides further clarification on math credit option. The proposed amendment clarifies the role of credentialed staff needed for guidance and counseling at technology centers. The proposed amendment clarifies language to reflect current procedures in Family and Consumer Science programs and provide school districts with additional flexibility. The proposed amendment better defines areas of instruction for Trade and Industrial Education in secondary programs, and provides flexibility for local school districts. The proposed amendment eliminates duplication of certification information and provides more flexibility for teachers in Science, Technology, Engineering and Math (STEM) programs, clarifies language and better defines full-time, part-time and unfunded STEM programs.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

780:20-1-3. Framework and Definition of Work-based Learning

(a) Work-based learning is a type of job training that combines on-the-job and classroom instruction. In CareerTech education, work-based learning is an educational strategy and framework that utilizes the delivery of a continuum of learning that is work-based and involving sustained, meaningful interactions with industry or community professionals that foster in-depth, firsthand engagement with the tasks required in a given career field. Experiences may be delivered in workplaces, in the community, at educational institutions and/or virtually, as appropriate, and include a range of activities such as workplace tours, job shadowing, school-based enterprises, internships and apprenticeships.

(b) A full continuum of work-based learning experiences, progressing in intensity, is accessible to every student at some point during the program of study. Examples include, but are not limited to business and industry field trips, job shadowing, internships and apprenticeships, service learning, cooperative education and school-based enterprises, as well as entrepreneurial experiences. Work-based learning experiences are age appropriate and aligned with relevant national, state and/or local standards. Work-based learning experiences develop and reinforce relevant technical, academic and employability knowledge and skills. Work-based learning experiences are intentionally aligned with each student's education and career goals.

(c) Work-based learning experiences are provided through delivery methods that maximize meaningful interaction with business professionals. Requirements and procedures for work-based learning experiences that address access, selection, liability, supervision, rights and responsibilities, safety, transportation, learning objectives and evaluations are formalized and shared in advance of work-based learning experiences with employers, students and parents/guardians (as appropriate). All work-based learning experiences comply with relevant federal, state and local laws and regulations. Work-based learning experiences are supervised by CareerTech staff with clearly defined roles. Students engage in reflection and document learning resulting from work-based learning experiences, such as through a portfolio or presentation.

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT CAREERTECH PROGRAMS

780:20-3-1. Administration and supervision

(a) **Advisory committee.** Each full-time CareerTech program must have an occupational advisory committee that is formally organized and meets at least once annually. The membership of the advisory committee must be diversified with the majority of membership representative of occupations for which the program is training.

(b) **Civil rights compliance.** In order to receive federal funds, local administrators must comply with all civil rights procedures and prohibitions that include, but are not limited to, the following:

(1) **Annual public notification.** All recipients offering CareerTech programs shall, at the beginning of the school year, advise parents, employees, students, and the general public that all occupational opportunities will be offered without regard to race, color, national origin, sex, age, or disability.

(2) **Employment.** Recipients offering CareerTech programs shall not engage in any employment practice that discriminates on the basis of race, color, national origin, sex, age, or disability.

(3) **Accommodations for individuals with disabilities.** Students with disabilities shall be placed in the regular educational environment of any career and technology education program unless it can be demonstrated that the education of the individual with a disability, even with the use of support services, cannot be achieved satisfactorily.

(A) **Support services.** Support services are considered on a case-by-case basis and depend on the functional impact of the individual student's disability on learning and which laws pertain to the student's education. Decisions on what type of support services are to be utilized are a team decision. The team is made up of persons knowledgeable of the student, their disability, the course requirement as well as the local policy and laws.

(B) **Individual needs.** When students with disabilities are enrolled in any career and technology education program, evidence must exist as to how the student's individual needs are being met.

(C) **Participation in and review of IEP.** A representative of the area technology center shall be on the IEP team when enrollment in a career and technology education program is considered to be an appropriate part of the student's IEP. Career and technology education instructors, whether teaching in an area technology center or in a comprehensive school program, shall have access to a copy of the IEP before the identified student enters the program. State accreditation standards: Part I, Standard VI, Student Services, 210:35-11-51 (b). Guidance and counseling services; Part II, Standard VI, Student Services, 210:35-13-74 (e).

(D) **Accommodation plans.** Students who have provided appropriate documentation of a disability, who have been determined under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act as a qualified individual with a disability in relation to the career and technology education program, and who require necessary accommodations in order to participate in and benefit from career and technology education will have an accommodation plan in place. This plan will be developed by a group of persons knowledgeable about the student, including the student, and will specify the agreed upon services necessary for the student to participate in and benefit from career and technology education.

(E) **Staff Development.** Regular staff development shall include instruction in maintaining confidentiality, modifying instruction, and reviewing and interpreting special needs documents.

(4) **Apprenticeship.** Agreements entered into for the provision or support of apprenticeship training shall not discriminate on the basis of race, color, national origin, sex, age, or disability, and should so state.

(5) **Comparable facilities.**

(A) **Facilities.** Changing rooms, showers, and other facilities provided for CareerTech students of one sex shall be comparable to those provided to CareerTech students of the other sex.

(B) **Nondiscrimination.** CareerTech facilities may not be located, constructed, modified, or renovated in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, age, or disability.

(6) **Financial assistance.** Financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes shall be provided to CareerTech students without regard to race, color, national origin, sex, age, or disability, except where necessary to overcome the effects of past discrimination.

(7) **Printed materials.** Counseling and other printed materials shall be provided to CareerTech students for program selection recruitment, career/employment selection,

and promotional activities without regard to race, color, national origin, sex, age, or disability.

(8) **Work-site learning.**

(A) **Nondiscrimination.** Work-site learning opportunities shall be made available to CareerTech students without regard to race, color, national origin, sex, age, or disability.

(B) **Nondiscrimination on the job.** All written agreements between school and employer must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, age, or disability.

(c) **Local administration supervision.** The school administration shall provide program supervision and coordinate the CareerTech program activities as an integral part of the overall educational program in the school.

(d) **Local teacher supervision.** Each CareerTech teacher shall be responsible for providing appropriate activities that will contribute to the development of each CareerTech student according to the student's occupational objective and for conducting and reporting student follow-up upon exit from or completion of the program.

(e) **Cooperative programs.**

(1) **Cooperative education.** The cooperative method of education is a joint effort between the school system and business and industry.

(2) **Supervision of students.** Schools offering cooperative CareerTech programs shall provide adequate time for teacher-coordinators to supervise and coordinate the activities of student learners. Adequate time shall be determined by applying the following formula:

(A) 0-25 cooperative students - 1 period (hour) per day

(B) 26-50 cooperative students - 2 consecutive periods (hours) per day

(3) **Exemption of planning period.** The one-hour planning period shall not be considered coordination time.

(4) **Responsibilities of the teacher-coordinator.**

(A) **Responsibilities.** The teacher-coordinator shall have the responsibility of coordinating classroom instruction, on-the-job activities or hands-on experience, and placement of students.

(B) **Training station visits.** The teacher-coordinator shall make a minimum of one (1) on-site visit per grading period to each training station employing cooperative CareerTech students. The purpose of these visits shall be to document and coordinate the learning experiences of the students. Training station visits shall be documented and put on file in the teacher's classroom.

(C) **Student files.** A "Memorandum of Training" and a training plan shall be on file for each cooperative student, and a copy shall be sent to the employer and parents.

(D) **Employer evaluation.** Each employer shall complete a written evaluation of the student's progress at least one time per grading period, and a copy of this evaluation shall be on file in the teacher's office. Employers are also required to have proof of age on file and a work permit if the employee is under18 years of age.

(5) **Scholastic credit.**

(A) **Credit for on-the-job training/internship.** Additional units of credit may be added to the unit(s) earned in the classroom for being employed in an occupationally appropriate training station during the school year by applying the following:

(i) an average of 10 periods (hours) per week for a minimum of 30 weeks of on-the-job training under the supervision of a teacher-coordinator = 1 unit;

(ii) an average of 20 periods (hours) per week for a minimum of 30 weeks on-the-job training under the supervision of a teacher-coordinator = 2 units;

(iii) in the case of block schedules, where a student completes the requirements for a unit of class work in one semester, a student could also earn an additional $\frac{1}{2}$ unit for 10 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator, or

(iv) a student could earn an additional 1 unit for 20 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator.

(v) Employers or their representatives shall complete a written evaluation of the cooperative students worksite performance for each grading period. The teacher is responsible for converting the employer's evaluation into the appropriate letter grade for the student's on-the-job grade. Not to be confused with the pass/fail or satisfactory/unsatisfactory grade sometimes given to students participating in a work release program.

(B) **Documentation of work hours.** Teachers must maintain, in the school files, documentation of the number of hours each cooperative student works.

(C) **Extra assignments.** If extenuating circumstances exist, and the student is not employed, the teacher must document extra assignments equal to one hour of classroom instruction per day for every hour under the required 10 hours per week of employment.

(D) **School release time.** A student who is employed in accordance to 5(A) above and is receiving credit for a supervised cooperative work experience may be released up to two hours per day from the normal six-hour school day.

(E) **Classroom credit only.** If the teacher cannot document extra assignments and/or hours worked, the student shall receive only credit for the classroom activities.

(f) **Records and reports.** Each local education agency or eligible recipient shall submit student accounting and other required reports on the specified due date.

(g) **Maintenance of confidential records.** Each technology center shall develop and implement a local policy regarding the confidentiality of all personally identifiable information and education records. This policy shall meet the requirements of the Individuals with Disabilities Act (IDEA) CFR 300.560-300.574 and the Family Educational Rights and Privacy Act (FERPA) 34 CFR 99.1-99.67 concerning collection, storage, disclosure, and destruction of confidential student records.

(h) **Career practicum.** A career practicum is defined as a planned program of worksite learning experiences that are relevant to the student's program, coordinated with the academic/school-based curriculum, and includes work-site mentoring. Units for a career practicum may be granted when the following guidelines are met:

(1) The career practicum shall:

(A) be based upon a student's plan of study or career pathway

(B) be based on a written plan of identified progressive work site experiences or work processes which are coordinated with the academic/school-based curriculum.

(C) require regular contact through work-site visits and other communication, and

(D) measure progress made toward the attainment of identified career practicum competencies.

(2) A school site contact must hold a secondary license/certificate to coordinate the career practicum.

(3) Every student participating in a career practicum shall be assigned a trained, work site mentor. Mentors will be oriented to the purpose and goals of the career practicum, will facilitate the attainment of competencies, will be responsible for evaluating the student's performance, and will consult with the school site coordinator and employer.

(4) The career practicum shall conform to applicable safety, child labor, labor standards, and equity laws.

(5) A career practicum agreement will be developed which outlines the responsibilities of the student, school site coordinator, parent/guardian, mentor and employer.

(6) A student must be 16 years of age and enrolled in grade eleven or twelve.

(7) One unit may be granted for the career practicum when all of the above guidelines are met, and the student is involved in a work site learning experience an average of 10 hours per week during the school year or the student is involved in a work site learning experience a minimum of 300 hours during the school year.

(8) Not more than two (2) units earned may be granted for a career practicum and applied toward high school graduation. Units may be granted for work site learning experiences as part of a career practicum in an accredited summer high school program.

(i) **Career guidance and counseling for secondary and full time programs.** Technology centers shall have an identifiable guidance program in place that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments to provide guidance in program selection and placement, and provide support for students to help them be successful in their career pathway. This includes but is not limited to:

(1) All students in accredited program have ~~plans of study~~individual career academic plans developed~~,~~ and updated~~,and on file~~ to identify and document career and academic services, as well as technical and academic courses to help maximize career success and employability.

(2) All students are enrolled or placed in a technology center program on the basis of their documented interest and ability to benefit from training, work history, IEP provisions, accommodation plans, and/or their ~~plans of study~~individual career academic plans developed at the sending school or on cooperation with other agencies.

(3) The technology center guidance and counseling staff coordinates all services with guidance and counseling staff from sending schools, higher education institutions and other agencies through regularly planned informational meetings and/or correspondence.

(4) Counselors shall be appropriately certified and credentialed for the grade levels to which they are assigned. School counselors shall hold a valid Oklahoma School Counselor Certificate appropriate to grade levels to which they are assigned. (State accreditation standards: 210:35-9-45) The title of counselor should only be applied to those staff with appropriate certifications and/or credentialing.

(5) Each technology center guidance and counseling program should have an advisory committee that is formally organized and meets at least annually. The membership of the advisory committee must be diversified with representation from a variety of stakeholders.

(j) **Math Credit for Certain Career and Technology Education Classes.** After July 1, 2018 and to fully implement the provisions of SB 1370 (2018), for students on the CORE curriculum only, acceptance and successful completion of one (1) year of a full-time, three-hour career and technology program leading to an industry credential/certificate or college credit shall count as one math unit for high school graduation under the provisions of 70 O.S. 2011, Section 11-103.6 (D), as amended. The provisions of this rule shall be limited to accepted industry credentials/certificates that are industry-endorsed or industry-aligned. The Oklahoma Department of Career and Technology Education shall compile a list of accepted industry credentials/certificates and present the list to the State Board of Career and Technology Education for its review. The list of accepted industry credentials/certificates shall be reviewed annually by the State Board of Career and Technology Education.

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to CareerTech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school grades eight through twelve and shall be provided by comprehensive school districts. Technology center school districts shall be prohibited from operating Agricultural Education programs or FFA chapters in any location. Each student enrolled in an agricultural education program shall participate in a supervised agricultural experience project. For each agricultural education program which is funded by the Oklahoma Department of Career and Technology Education, the local school district shall provide transportation services, for the agricultural education program and FFA program related duties and activities. (FFA is an integral part of the agricultural education program.)

(2) **Business, Marketing and Information Technology Education.** Business, Marketing and Information Technology Education programs are designed to prepare junior high and high school students (grades 7 through 12) and adults for pathways to careers in business, marketing and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Comprehensive Family and Consumer Sciences Education.** Family and Consumer Sciences programs are designed for students grades 6 through 12 to experience hands-on experiential and problem based learning to explore opportunities for careers, post-secondary transitions and pathways in family and consumer sciences related areas.

(B) **Occupational Family and Consumer Sciences Education.** Occupational Family and Consumer Sciences programs are designed to prepare students in grades 11 and 12 and/or adults for careers in specific family and consumer sciences occupations.

(4) **Health Careers Education.**

(A) **CareerTech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Science Technology Engineering and Mathematics (STEM).** Science Technology Engineering and ~~mathematics~~Mathematics programs are designed to prepare students grades 6-12 for hands-on and problem based curriculum that allows students to explore opportunities for careers, post-secondary transitions and pathways in Science, Technology, Engineering and Mathematics ~~and prepares students for post-secondary transition and pathways for careers in~~ (STEM).

(6) **Trade and Industrial Education/TechConnect.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 6 through 12 for hands-on experience and problem based learning that allows students to explore opportunities for careers, post-secondary transitions and pathways in Trade and Industrial Education. The state program administrator must approve exceptions. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate CareerTech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** CareerTech course offerings must be in agreement with the course titles listed in the current ***Standards for Accreditation of Oklahoma Schools***, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the ***Standards for Accreditation of Oklahoma Schools***.)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five CareerTech instruction class periods and one planning period for a six-period day, and six CareerTech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Full-time program teachers of Marketing Education, Career Transitions Education, and TechConnect may be allowed to teach one related course, subject to the approval of the appropriate ODCTE state program administrator.

(C) **Trade and Industrial Education/TechConnect.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center.

(D) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program administrator.

(E) **Science Technology Engineering and Mathematics.** Teachers of Science Technology Engineering and Mathematics may be allowed to teach one related course, subject to approval of the appropriate cluster administrator. Science and ~~Math~~math courses listed in the STEM program can be counted as a STEM course, not a related course, with the approval of the cluster administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the CareerTech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the CareerTech student organization, FFA.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business, Marketing and Information Technology Education.**

(i) **Full-time programs in comprehensive schools.** A full-time program in comprehensive school shall consist of five instructional class periods (five credits) and one planning period for a six-period day or six instructional class periods (six credits) and one planning period for a seven-period day that is offered to students in grades 7 through 12. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period. Instructors shall teach only approved business, marketing and information technology education courses that are aligned with an approved occupational outcome. State-approved syllabi identify the required length of courses - one-half or full unit of credit. Business, Marketing and Information Technology Education instructors shall have no other extracurricular duties or responsibilities other than those required through the BPA or DECA student organizations and normal school supervisory duties.

(ii) **Full-time programs in technology centers.** A full-time program in a technology center shall consist of two three-hour block periods of instruction for students in grades 10 through 12 and adults and should have an occupational outcome that includes a work-based learning component. Any exceptions must be approved in writing by the state program administrator.

(iii) **Technology/equipment.** Business, Marketing and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written program plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(iv) **Part-time comprehensive school programs.** Comprehensive school Business, Marketing and Information Technology Education programs that are less than full-time will be funded as a half-time program and will be approved only through the permission of the state program administrator. A part-time program shall include a minimum of three approved business, marketing or information technology education courses with one planning period.

(v) **Unfunded programs.** Non-funded Business, Marketing and Information Technology

Education programs must follow state policies and guidelines and maintain an active BPA or DECA student organization chapter in order to remain in good standing.

(C) **Comprehensive Family and Consumer Sciences Education.**

(i) **Full-time programs.** A full-time program shall consist of ~~at least two levels of~~ only approved family and consumer sciences classes with one ~~conference~~planning period in the daily schedule~~, and the instructor shall teach only approved family and consumer sciences courses~~. ~~Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule or approved courses with one planning period.~~ Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Each single teacher program shall offer at least two complete programs of study in a three-year period. A multi-teacher district shall offer one more program ~~or~~of study than the number of teachers per building. Coaching, administration, or other similar full-time duties ~~will not be approved~~must be approved by the state program manager in writing prior to implementation.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven or eight period day.

~~(iii) **Course coordination.** Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.~~

(~~iv~~iii) **Unfunded programs.** In the case of ~~a~~an approved unfunded~~,non funded~~ family and consumer sciences program, the program must follow state policy and guidelines to remain in good standing. Only approved programs shall have a Family, Career and Community Leaders of America chapter.

(D) **Occupational Family and Consumer Sciences Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time occupational family and consumer sciences education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time occupational family and consumer sciences education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. ~~No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.~~

(E) **Health Careers Education.**

(i) **Comprehensive Schools.** Programs in 7th, 8th, and 9th grade or high schools vary in length and may be offered in one, two or three blocks of time. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Technology Centers.** Programs vary in length and in hours per day according to accrediting bodies and program requirements.

(F) **Science, Technology, Engineering and Mathematics.**

(i) **Full-time program.** In a six period day, instructor shall teach five approved CareerTech STEM courses and/or one approved related course. In a seven period day, instructor shall teach six approved CareerTech STEM courses and/or one approved related course. In an eight period day, instructor shall teach seven approved CareerTech STEM courses and/or one approved related course. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period.~~**Biomedical Science and Medicine.** The following courses are required to be taught: Principles of Biomedical Sciences (PBS), Human Body Systems (HBS), Medical Interventions (MI), Biomedical Innovations (BI), in addition to the appropriate science and math courses. Technology centers and high schools are required to administer each biomedical end of course test if applicable, preferably by a proctor and/or testing liaison.~~

(ii) **Part-time comprehensive school programs.** Comprehensive school Science, Technology, Engineering and Math Education programs that are less than full-time will be funded as a half-time program and will be approved only through the permission of the state program administrator. A part-time program shall include a minimum of three approved science, technology, engineering and math education courses with one planning period.~~**Biotechnology.** The following courses are required to be taught: Survey of Biotechnology, Biotechnology I, Biotechnology~~

~~II, Advanced Biotechnology I, Advanced Biotechnology II and Biotechnology Capstone in addition to the appropriate math and science courses. Other biotechnology courses and may be approved by STEM division of ODCTE.~~

(iii) **Unfunded programs.** Non-funded Science, Technology, Engineering and Math Education programs must follow state policies and guidelines and maintain an active TSA, HOSA or SkillsUSA student organization chapter in order to remain in good standing.~~**Computer Science.** The following courses are suggested to be taught in an ODCTE computer science academy program, Computer Science Essentials, Computer Science Principals (CSP), Computer Science Applications (CSA), Capstone Course: Cybersecurity, in addition to the appropriate math and science courses. Technology Centers and high schools are required to administer each computer science end of course test, preferably by a proctor and/or testing liaison.~~

~~(iv) **Gateway to Technology.** This program is designed for grades 6-8 primarily and 5th grade with state program administrator written approval. The following classes are required to be taught: Design & Modeling, two other Gateway courses approved by the state program administrator.~~

~~(v) **Engineering.** A minimum of three engineering courses required. Foundation courses required are Introduction to Engineering Design (IED) and Principles of Engineering (POE). In addition to at least one specialty course preferably Engineering Design and Development (EDD)/capstone course. Appropriate math and science courses must be offered. Technology Centers and high schools are required to administer each engineering end of course test if applicable, preferably by a proctor and/or testing liaison.~~

~~(vi) **Technology Engineering Middle School (grades 6-8):** This program is designed for grades 6-8 primarily and 5th grade with state program administrator written approval.~~

~~(vii) **Technology Engineering High School (grades 9-12):** The technology engineering courses are designed for 9-12 grades.~~

~~(viii) **Advanced Career Engineering:** Minimum of two approved foundational courses and at least one other course. Four courses preferred. Appropriate math and science courses must be offered. Technology Centers and high schools are required to administer each engineering end of course test by a proctor and/or testing liaison.~~

(G) **Trade and Industrial Education.** Tech-Connect (grades 6-10): The appropriate approved courses need to be taught from one of the following career pathways: Tech Connect Agriculture, Food and Natural Resources; Tech Connect Architecture & Construction; Tech Connect Arts; A/V Technology and Communications; Tech Connect Information Technology; Tech Connect Law, Public Safety and Security; Tech Connect Manufacturing; Tech Connect Transportation, Distribution and Logistics; Tech Connect Diversified Programs. ~~All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week.~~

(H) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Introduction to Agricultural Science is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business, Marketing and Information Technology Education.**

(i) **Programs in comprehensive schools.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student. A maximum of 25 students per teacher-coordinator shall be enrolled in a capstone course or cooperative learning course. Only two sections of cooperative learning will be allowed per program. Students enrolling in a cooperative learning program must have completed a minimum of 120 hours of approved business, marketing, and information technology education coursework.

(ii) **Programs in technology centers.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Comprehensive Family and Consumer Sciences programs.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be:

(I) Non-laboratory courses - 30 students

(II) Laboratory courses - 24 students

(III) Work-based learning - The School and Community Partnership course is a work-based course in which students gain work-site experience and elective credit. The work-site experience must relate directly to an Oklahoma family and consumer sciences career cluster. Enrollment in this course is limited to 24 students. Additional rules in 780:20-3-1(e) and (h) may apply.

(ii) **Occupational Family and Consumer Sciences Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of occupational family and consumer sciences education.

(D) **Health Careers Education.**

(i) **Comprehensive Schools.** A minimum of ten and a maximum of eighteen students shall be enrolled in each course/section of a comprehensive school health careers education program.

(ii) **Technology Centers.**

(I) **Full time high school health careers programs.** A minimum of ten and 8a maximum of eighteen students per instructor shall be enrolled in a Health Careers Education program. Those programs utilizing student-centered learning as the primary method of instruction shall have a maximum of fifteen students per instructor. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(II) **Full-time adult-only health careers programs.** A minimum of eight and a maximum of twelve students per instructor shall be enrolled in a full-time adult-only Health Careers Education program. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(E) **Science, Technology, Engineering and Mathematics.**

~~(i)~~ **Student Enrollment Limits.** The maximum enrollment for each period of a STEM program shall be 24 students. Consideration should be given to the size of the facility. ~~The minimum recommended floor space per student is 60 square feet.~~

~~(ii)~~ ~~**Full-time program.** In a six-period day, instructor shall teach five approved CareerTech STEM courses and/or one approved related course. In a seven-period day, instructor shall teach six approved CareerTech STEM courses and/or one approved related course. In an eight-period day, instructor shall teach seven approved CareerTech STEM courses and/or one approved related course.~~

(F) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and career transitions programs, which may have 50 students per career transitions teacher. Consideration should be given to the size of the facility. ~~The minimum recommended floor space per student is 60 square feet.~~

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** CareerTech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

780:20-3-4. Instructors

(a) **Certification on file.**

(1) All CareerTech secondary teachers shall have (on file in the local education agency) an appropriate teaching

certificate issued by the Certification Section of the State Department of Education.

(2) Technology Center Standard Certification for Teachers and Instructors in Technology Centers School Districts, not otherwise certified under paragraphs 210 O.A.C. 20-9-91 (1-4). Consistent with the provisions of 70 O.S. 2011, § 6-189, as amended, to be eligible for consideration for a technology center standard teaching certificate under this provision, an applicant must submit documentation to the Oklahoma Department of Career and Technology Education verifying that the individual has received an associate's college degree (2-year degree) or above, an industry recognized credential for an occupation that includes the subject matter to be taught at the technology center, and appropriate professional development. The State Board of Education, upon recommendation of the Oklahoma Department of Career and Technology Education, may issue a technology center standard teaching certificate to an applicant who submits a completed application for certification containing the requirements listed herein along with the applicable certification fee, and has on file with the State Department of Education a current criminal history record check. The applicant shall be responsible for the costs of the criminal history record checks. The technology center standard teaching certificate shall be valid only for the subject area(s) aligned to the applicant's degree, credential and/or work experience. For purposes of this provision, the term "industry recognized credential" shall have its ordinary and usual meaning and shall reflect industry-based skills, standards and certifications.

(b) **Administrative responsibility.** It shall be the responsibility of school administration to assure that a CareerTech teacher applicant meets CareerTech certification requirements before placing the applicant under contract. Certification requirements are found in the ***Teacher Certification Guide for School Staff Assignments*** on the Oklahoma State Department of Education website.

(1) **Occupational division approval.** All CareerTech teachers must have the CareerTech certification application approved by the program administrator in the appropriate occupational division.

(2) **Occupational division renewal of certification.** All CareerTech teachers must complete the specific occupational division's requirements for CareerTech certification renewal and be approved by the appropriate program administrator.

(c) **Health Careers Education.**

(1) **Faculty requirements.** Faculty shall hold current credentials as a licensed, certified and/or registered health care professional and must meet the requirements of the local education agency, Health Careers Education Division, and the respective accrediting agency.

(A) **Technology Centers: High School Health Careers Programs.** Faculty holding a baccalaureate degree will be required to have additional coursework specific to Career and Technology teacher education. These requirements will be posted on the Health Careers Education website. Faculty shall have a degree plan on file with the Health Careers Education division and provide documentation in the form of transcripts demonstrating yearly progress toward obtaining required coursework.

(B) **Technology Centers: Adult Only Health Careers Programs.** Faculty shall hold a minimum of an Associates' degree or be on a degree plan making yearly progress toward completion. State and national accreditation standards may indicate additional faculty requirements towards advanced degrees. Faculty hired before 2010 will be exempt from this rule.

(2) **On-file applications.** Faculty shall have an application on file in the Health Careers Education office, including a Statement of Qualifications form, all current transcripts and, a copy of professional credential or credential verification, and, if appropriate, current teaching certificate or application for teaching certificate.

(3) **Clinical experience.** Faculty must have a minimum of two years' work experience in a clinical setting within the last five years prior to their first teaching experience. The Health Careers Education Program Manager must approve any variations.

(d) **Science Technology Engineering and Mathematics (STEM). Faculty requirements for Teachers Teaching Math and/or Science Academic Courses**.

~~(1) **Biomedical Sciences.** Required Certifications: Biology, Chemistry, or Physics~~

~~(2) **Biotechnology.** Required Certifications: Biology, Chemistry, or Physics~~

~~(3) **Computer Science.** Required Certifications: Computer Science, Advanced Mathematics, Intermediate Mathematics, Physics, or Business Education (with AP Computer Science teaching experience or must have or attend College Board AP training.)~~

~~(4) **Gateway to Technology.** Required Certifications: Appropriate math and/or science meeting State Department of Education's grade level requirements or Technology Engineering. Teachers teaching at the middle or high school level must hold the appropriate certification to instruct the specific grades being taught. Check State Department of Education current requirements.~~

~~(5) **Engineering.** Required Certifications: Chemistry, Physics or Advanced Mathematics.~~

~~(6) **Technology Engineering Middle School.** Appropriate math and/or science meeting State Department of Education's grade level requirements and Technology Engineering. Teachers teaching at the middle or high school level must hold the appropriate certification to instruct the specific grades being taught. Check State Department of Education current requirements.~~

~~(7) **Technology Engineering High School.** Required Certifications: Appropriate math and/or science meeting State Department of Education's grade level requirements or Technology Engineering.~~

~~(8) **Trade and Industrial/Tech Connect Comprehensive School Programs.** Required Certifications: Trade & Industrial with demonstration of competencies~~

~~through appropriate mechanism or Technology Engineering with demonstration of competencies through appropriate mechanism. Technical Applications, Applied Engineering, TechConnect Robotics or TechConnect Automation may use one of the above mentioned or the appropriate math and/or science meeting State Department of Education's grade level requirements.~~

~~(9)~~ ~~**Teachers teaching math and/or science academic courses.**~~ Must meet the requirements of the Oklahoma State Department of Education for that specific academic course/area. All related courses must meet the Oklahoma State Department of Education and/or ODCTE requirements for the course/area.

(e) **Professional development.** New instructors shall participate in preservice professional development activities as required by the appropriate divisions. All secondary and full-time adult CareerTech instructors and staff shall participate in professional inservice as required by the appropriate divisions, including summer conference and mid-year activities.

[OAR Docket #19-699; filed 6-27-19]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 1. GENERAL INFORMATION

[OAR Docket #19-660]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
810:1-1-2 [AMENDED]
810:1-1-3 [AMENDED]
AUTHORITY:
Workers' Compensation Commission; 85A O.S. §§ 19(C), 22, 36, 101
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 21, 2018
COMMENT PERIOD:
January 15, 2019 through March 11, 2019
PUBLIC HEARING:
March 11, 2019
ADOPTION:
March 14, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 21, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
810:1-1-2
810:1-1-3
Gubernatorial approval:
July 26, 2018
Register publication:
35 Ok Reg 729
Docket number:
18-640
INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The adopted rules respond to the Legislature's enactment of SB1249 (2018), which repealed the Certificate of Noncoverage and created the Affidavit of Exempt Status. The rules define "Affidavit of Exempt Status" and remove references to the repealed Certificate of Noncoverage.

The rules also amend the definition of "Mandatory EDI Implementation Date" to reflect that mandatory implementation began on September 1, 2018.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

810:1-1-2. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Affidavit of Exempt Status" means an affidavit authorized by 85A O.S., §36 which any individual or business entity that is not required to secure compensation pursuant to the AWCA may execute and file with the Oklahoma Workers' Compensation Commission.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. § 1, et seq.

~~**"Certificate of noncoverage"**~~ ~~or~~ ~~**"CNC"**~~ ~~means a certificate which may be issued by the Oklahoma Workers' Compensation Commission after proper application and reasonable investigation to a sole proprietor or the partners of a partnership who do not elect to be covered by the AWCA.~~

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Mandatory EDI implementation date" means September 1, 2018.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self-fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' Compensation Commission fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:1-1-3. General description of the Oklahoma Workers' Compensation Commission

(a) **History.** The Oklahoma Workers' Compensation Commission was created pursuant to legislation enacted in 2013 and is responsible for administration of the Administrative Workers' Compensation Act, 85A O.S. § 1, et seq., except as otherwise provided by law.

(b) **Composition.** The Commission is comprised of three members who are appointed by the Governor and confirmed by the Senate for staggered terms. The initial appointments are for two (2), four (4) and six (6) years respectively, as determined by the Governor. Subsequent terms are for six (6) years. One of the initial appointments must be from a list of three (3) nominees selected by the Speaker of the Oklahoma House of Representatives. The Chair of the Commission is appointed by the Governor from among the Commission members. The Chair organizes, directs and develops administrative work, employs administrative staff within budgetary limitations, and performs other duties authorized by law or prescribed by the Commission. The Commission appoints an administrator who is the administrative officer of the Commission and manages the activities of its employees and performs other duties prescribed by the Chair or Commission. The title of the administrative officer shall be Executive Director. The Commission may appoint as many Administrative Law Judges and other personnel as necessary within budgetary limitations to effectuate the AWCA.

(c) **Duties.** It is the Commission's responsibility to apply the law as set out in the AWCA. The Commission has adjudicative, administrative and regulatory functions. Those functions include providing fair and timely procedures for the resolution of workers' compensation disputes; monitoring claims and benefit payments to injured workers, processing settlements and requests for changes in physicians; ensuring that employers maintain required insurance coverage; ~~issuing certificates of noncoverage to eligible applicants;~~ processing Affidavits of Exempt Status and Cancellations of Affidavits of Exempt Status; and approving applications of employers to act as self-insurers; processing and approving applications related to independent physicians, mediators and case managers; developing and maintaining a workers' compensation fee schedule; providing legal information and assistance to interested persons who have questions concerning the Oklahoma workers' compensation law; and participating in programs to explain the law and functions of the Commission to the general public.

(d) **Main offices of Commission.** The main offices of the Commission are located at: Denver Davison Building, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105.

[OAR Docket #19-660; filed 6-25-19]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 10. PRACTICE AND PROCEDURE

[OAR Docket #19-661]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
810:10-1-3 [AMENDED]
810:10-1-5 [AMENDED]
810:10-1-10 [AMENDED]
Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners
Part 9. Post Order Relief
810:10-5-66 [AMENDED]
Part 17. Fees
810:10-5-105 [AMENDED]
AUTHORITY:
Workers' Compensation Commission; 85A O.S. §§ 19(C), 22, 101(B)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 21, 2018
COMMENT PERIOD:
January 15, 2019 through March 11, 2019
PUBLIC HEARING:
March 11, 2019
ADOPTION:
March 14, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 21, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
810:10-5-105 [AMENDED]
Gubernatorial approval:
July 26, 2018
Register publication:
35 Ok Reg 730
Docket number:
18-641

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted rules allow electronic submission of the Attorney Mailing and Email Address Change Form via the Commission's website; amend the filing requirements for Requests for Review and written arguments to require a copy be submitted for filling and for distribution to each of the Commissioners; and establish a filing fee of fifty dollars ($50.00) for Affidavits of Exempt Status in accordance with 85A O.S. §36(D).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-3. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mandatory EDI implementation date" means September 1, 2018~~, unless a subsequent date is adopted by the Commission~~.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:10-1-5. Commencing temporary total disability compensation and medical benefits

(a) Upon receipt of notice or of knowledge that an employee has been injured, the employer has an obligation under the AWCA to provide that employee with reasonable and necessary medical treatment for the injury, and to pay temporary total disability compensation if the employee is unable to perform the employee's job, or any alternative work offered by the employer, for more than three (3) calendar days. No order from the Commission directing the employer to provide these benefits is required.

(b) ~~The first installment of temporary total disability compensation is due on the fifteenth day after the employer has notice of the injury. By that date, all temporary total disability compensation then accrued shall be paid to the employee, and weekly installment payments shall be made thereafter, unless the employer controverts the employee's right to compensation or requests an extension to determine compensability~~If an employer is unable to obtain sufficient medical information as to the alleged injury or death within fifteen (15) days following receipt of notice, although the employer has acted in good faith and with all due diligence, the employer may apply in writing for an extension of time for making payment of the first installment or controverting the claim as prescribed in 85A O.S. § 86 and 810:10-1-4(b). The employee may request a hearing before an Administrative Law Judge of the Commission no sooner than ten (10) days after filing a claim for compensation with the Commission as provided in 810:10-5-2.

810:10-1-10. Contact information for service of notice; entry of appearance; leave to withdraw

(a) **Contact information for service of notice.**

(1) Each party, upon instituting or responding to any proceedings before the Commission, shall file with the Commission the party's address, or the name and address of any agent upon whom notices shall be served to such party or agent at the last address so filed with the Commission. A party, including a claimant acting pro se, shall promptly communicate any change of address to the Commission's Docket Office.

(2) An attorney of record, as defined in Subsection (d) of this Section, shall give notice of a change of address by electronically filing a form on the Commission's website at www.ok.gov/wcc, or by providing the Commission's Docket Office with a copy of the letterhead containing the new address and a list containing the Oklahoma Bar Association number of each attorney member of the firm who regularly appears before the Commission.

(3) Notice and service of documents may be made as prescribed in 12 O.S. § 2005(B). It is the responsibility of parties to an action before the Commission to provide a current mailing address, and email address if available, to Commission staff. Notices and documents sent to the last known address or email address on file with the Commission, are presumed delivered in a timely manner, and presumed received.

(b) **Entry of appearance.**

(1) An entry of appearance shall be filed by any attorney or law firm representing any party in any proceeding before the Commission. No attorney or law firm will be recognized in any case before the Commission unless the attorney or law firm duly entered their written appearance. When an entry of appearance has been duly filed by a law firm, any attorney member of that firm may appear and be recognized by the Commission. All entries of appearance when filed shall be accompanied by a written authorization signed by the client and attorney identifying the attorney or law firm as the client's representative, as defined in 810:10-1-3, to provide services in the workers'

compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) An appearance on behalf of the employer/insurance carrier shall be filed no later than ten (10) days after the employer/insurance carrier's receipt of a file-stamped copy of a claimant's claim for compensation filed pursuant to 810:10-5-2. The entry of appearance for the employer/insurance carrier shall identify whether or not the employer is an active member of a certified workplace medical plan in which the claimant is potentially enrolled, and if so, the name of the plan.

(c) **Leave to withdraw.**

(1) Once an entry of appearance has been filed, Leave to Withdraw can only be had upon written order of the Commission following appropriate notice to the client and the opposing side. Substitution of Counsel may be had by filing with the Commission and serving on the opposing party a notification of the substitution, signed by the attorney of record, the substituted attorney and the client. Notification of the substitution when filed shall be accompanied by a written authorization signed by the client and substituted attorney identifying the attorney as the client's representative to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) Except when an attorney's representation has been terminated at the client's initiative, no attorney shall be allowed to withdraw as an attorney for a party when that attorney has signed the pleadings necessary to perfect an appeal to the Commission en banc. This prohibition shall apply until the appeal has been fully submitted to the Commission en banc for consideration. This prohibition shall not apply if another attorney has entered an appearance for the appealing party before the filing of the application to withdraw.

(d) **Attorney of record.**

(1) The attorney of record for the claimant in a case shall be the attorney signing the first claim for compensation filed in the case for the claimant as provided in 810:10-5-2. Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Commission shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw has been filed and granted by the Commission. Various attorneys may appear before the Commission in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this Subsection.

(2) Attorneys of record who change law firms shall notify the Commission of the status of the representation of their clients, and shall immediately seek Leave to Withdraw, when appropriate.

(e) **Attorney leave requests.** Attorneys must make leave requests at least seven (7) weeks in advance. Requests for leave that exceed a total of two (2) consecutive weeks or thirty-five (35) days per calendar year must be approved by the Chief Administrative Law Judge and Presiding Court of Existing Claims Judge. Leave requests must be submitted via the online request form on the Commission's website at www.ok.gov/wcc.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 9. POST ORDER RELIEF

810:10-5-66. Appeal of Commission Administrative Law Judge order

(a) **Request for Review.** Any party aggrieved by a judgment or award of an Administrative Law Judge, which party for purposes of this Section shall be known as the "appellant", may appeal the order to the Commission en banc by filing an original and ~~two (2)~~three (3) copies of a Request for Review with the Commission within ten (10) days of when the order was issued as reflected by the file-stamped date on the order. The Request for Review shall:

(1) be in writing;

(2) include a copy of the order being appealed;

(3) clearly and concisely rebut each issue in the Administrative Law Judge's order that the appellant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed Request for Review shall be deemed waived;

(4) be served on all other parties of record, which for purposes of this Section shall be known as the "respondents";

(5) have a certificate of service setting forth the manner of such service as required by 810:10-1-7;

(6) be accompanied by a designation of record filed by the appealing party and a copy submitted to the Commission reporter and all parties in the case concurrently with or before filing a Request for Review in all actions which are appealed to the Commission en banc. The cost of preparing the transcript shall be advanced immediately by the designating party. The transcript shall be prepared and sent to all parties to the appeal within thirty (30) days from the date the designation of record is filed; and

(7) be accompanied by a non-refundable filing fee in the sum of One Hundred Seventy-five Dollars ($175.00) pursuant to 85A O.S. § 78(B).

(b) **Timeliness of filings.** The timeliness of the filing of a Request for Review is governed by 810:10-1-13. Untimely Requests for Review do not invoke the jurisdiction of the Commission en banc and will not be reviewed by the Commission en banc.

(c) **Oral argument.** Oral argument before the Commission en banc shall be limited to ten (10) minutes per side, unless the time is enlarged by leave of the Commission en banc. Any party failing to appear when the appeal is called for oral argument shall be deemed to have waived the right to argue

the case, and the Commission en banc may hear argument on behalf of the present party and decide the appeal on the briefs and argument heard. If no party appears, the appeal shall be considered as submitted on the record.

(d) **Written argument.** In any case pending on a Request for Review, the parties of record shall submit written arguments, including a statement of facts and legal authority for their respective positions, as an aid to the Commission en banc. The written argument shall not exceed five (5) pages in length, and shall be double spaced and prepared in at least ten point font size on 8 $\frac{1}{2}$" x 11" paper with one inch margins. No appendix or other documents shall be attached to the written argument. Appellants and cross-appellants have forty-five (45) days after the filing of the designation of record within which to file an original and ~~four (4)~~three (3) copies of the written argument with the Commission, with a copy served on all opposing parties. The opposing parties shall have ten (10) days within which to submit a response. When submitted, the original and ~~four (4)~~three (3) copies of the response shall be filed with the Commission and a copy served on the appellant or cross-appellant.

(1) Extensions of time for the filing of written arguments shall be granted only for cause.

(2) The failure of any party to timely file a written argument under this section may result in the striking of that party's brief from consideration, or if the untimely brief is that of an appellant or cross-appellant, in the dismissal of the appellant's or cross-appellant's appeal.

(e) **Motions.** For the purposes of this Section, "motion" means a formal request or application by a party for specific action by the Chair or Commission en banc, which is made orally, in the presence of all other parties, or in writing, served on all other parties.

(1) Prior to filing any motion, the movant shall personally confer with the opposing party or parties or, if represented, their attorneys of record to attempt to amicably resolve the subject matter of the motion. All motions shall include a statement that the movant has personally conferred or has used good-faith efforts to confer with all other parties and, if known, shall state whether any party has an objection to the motion. Any document referenced in the motion shall be attached to the motion.

(2) Written motions shall have a title describing the relief requested and be served on all other parties, or if represented, the attorneys of record. Any party may respond to a motion within ten (10) days, unless otherwise specified by the Chair or the Commission en banc. Hearings on motions will not be set unless a hearing is specifically requested and good cause is shown in the motion or response.

(3) No continuance of an appeal scheduled for review by the Commission en banc is permitted before the date of an oral argument without approval of the Commission Chair. Continuances requested on the date of the oral argument will be granted only upon a majority vote of the Commission en banc.

(4) Except for the time periods in subsection (a), the Chair or Commission en banc may order time periods or procedures that differ from those specified in this Section. The Chair may rule on procedural motions and shall issue written notice of any change ordered under this subsection to the parties to any appeal affected by the change.

(f) **Voluntary dismissals.** A request for review by the Commission en banc may be dismissed upon the agreement of all parties to the review. If a settlement is reached, the appellant shall promptly notify the Commission en banc.

(g) **Description of appeal proceeding.**

(1) In appeals pursuant to this Section, the Commission en banc may:

(A) modify the decision of the Administrative Law Judge;

(B) reverse the decision of the Administrative Law Judge and render a new decision;

(C) reverse the decision of the Administrative Law Judge and remand the matter to the Administrative Law Judge with instructions or for a new administrative hearing; or

(D) affirm the decision of the Administrative Law Judge~~.~~; or

(E) remand for further proceedings and appropriate action with or without relinquishing the Commission's jurisdiction of the appeal.

(2) The Commission en banc may reverse or modify the decision of an Administrative Law Judge only if it determines that the decision was against the clear weight of the evidence or was contrary to law. Any judgment of the Commission en banc which reverses a decision of the Administrative Law Judge shall contain specific findings relating to the reversal. In any case in which it appears that a prior controlling appellate decision is dispositive of the appeal, the Commission may summarily affirm or reverse, citing in its order this Section and the controlling decision.

(3) All proceedings of the Commission en banc shall be recorded by a court reporter, if requested by a party. Any party requesting a transcript of the proceedings shall bear the costs associated with its preparation. During the pendency of an appeal to the Commission en banc, the Administrative Law Judge shall retain jurisdiction over any issue not affected by the eventual ruling of the appellate body.

(h) **Appeal to Supreme Court.** An order of the Commission en banc may be appealed to the Oklahoma Supreme Court, as provided in 85A O.S. § 78, within twenty (20) days of being sent to the parties as reflected by the file-stamped date on the order.

PART 17. FEES

810:10-5-105. Fees

Fees payable to the Commission include:

(1) A fee of One Thousand Dollars ($1,000.00), payable by each carrier writing worker's compensation insurance in this state, upon securing a license to transact business in this state [85A O.S. § 29(A)];

(2) A fee of One Thousand Dollars ($1,000.00), payable by each self-insurer at the time it is approved to self-insure its obligations under the AWCA [85A O.S. § 29(B)];
(3) An annual fee of One Thousand Dollars ($1,000.00), payable by third-party administrators [85A O.S. § 29(C)];
(4) A fee of One Hundred Seventy-five Dollars ($175.00), payable by a party appealing an order or award of an Administrative Law Judge to the Commission en banc [85A O.S. § 78(B)];
(5) A fee of One Hundred Dollars ($100.00), for compiling and transmitting a record for appeal of a Commission order to the Oklahoma Supreme Court, payable by the appealing party [85A O.S. § 78(D)];
(6) A fee of One Hundred Forty Dollars ($140.00), payable by the party against whom an award becomes final (i.e. the employer or insurance carrier if there is an award of compensation, or the worker if there is a denial or dismissal of a claim for compensation) [85A O.S. § 118(A)]. Ten Dollars ($10.00) of the fee is payable by the Commission to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund;
(7) A fee of One Hundred Thirty Dollars ($130.00), payable by the worker if the reopen request is to reopen on a change of condition for the worse, or payable by the employer or insurance carrier if the reopen request is to reopen on a change of condition for the better [85A O.S. § 118(B)];
(8) A fee of One Dollar ($1.00) per page, payable as a copy charge [85A O.S. § 119(A)];
(9) A fee of One Dollar ($1.00) per search request for prior claims records, not to exceed One Dollar ($1.00) per claims record of a particular worker [85A O.S. § 120(B)];
(10) A fee of Forty-five Dollars ($45.00), plus postage, if any, for a Commission handbook [85A O.S. § 20(B)]; and
(11) A fee of Fifty Dollars ($50.00), payable by ~~an applicant requesting a Certificate of Noncoverage or a renewal thereof~~any individual or business entity filing an Affidavit of Exempt Status or a renewal thereof [85A O.S., §~~36(D)(2)~~36(D)]; and
(12) Such other fees as may be allowed by law or this Title.

[OAR Docket #19-661; filed 6-25-19]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 25. WORKERS' COMPENSATION INSURANCE AND SELF INSURANCE

[OAR Docket #19-662]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
810:25-1-1 [AMENDED]
810:25-1-2 [AMENDED]
810:25-1-3 [AMENDED]
Subchapter 5. Documentation of Exempt Status
810:25-5-1 [AMENDED]
810:25-5-3 [AMENDED]
AUTHORITY:
Workers' Compensation Commission; 85A O.S. §§ 19, 22, 36
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 21, 2018
COMMENT PERIOD:
January 15, 2019 through March 11, 2019
PUBLIC HEARING:
March 11, 2019
ADOPTION:
March 14, 2019
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 21, 2019
LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022
FINAL ADOPTION:
May 28, 2019
EFFECTIVE:
September 13, 2019
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
810:25-1-1 [AMENDED]
810:25-1-2 [AMENDED]
810:25-1-3 [AMENDED]
Subchapter 5. Documentation of Exempt Status
810:25-5-1 [AMENDED]
810:25-5-3 [AMENDED]
Gubernatorial approval:
July 26, 2018
Register publication:
35 Ok Reg 731
Docket number:
18-642
INCORPORATIONS BY REFERENCE:
n/a
GIST/ANALYSIS:
The adopted rules pertain to the Legislature's enactment of SB1249 (2018), which repealed the Certificate of Noncoverage and created the Affidavit of Exempt Status. The proposed revisions also amend the procedures for proceedings to review permitting actions taken by the Permitting Services Division.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 13, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

810:25-1-1. Purpose

This Chapter establishes procedures and standards for proof of coverage (85A O.S., § 42); ~~issuance of certificates of noncoverage~~filing of Affidavits of Exempt Status and Cancellations of Affidavit of Exempt Status (85A O.S., § 36); regulation of individual own risk employers, group self-insurance associations and third-party administrators for workers' compensation purposes (85A O.S., §§ 22, 29, 38, 102 and 103);

and enforcement of workers' compensation insurance requirements (85A O.S., § 40), as authorized in the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

810:25-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the person designated by the supervisory board of members of a group self-insurance association to oversee the financial affairs of the association, accept service of process on behalf of the association, act for and bind the association and members in all transactions either relating to or arising out of the operation of the association.

"Advisory loss costs" means the National Council on Compensation Insurance's projections of future claims costs and loss adjustment expenses by classification code.

"Affidavit of exempt status" means an affidavit authorized by 85A O.S., §36 which any individual or business entity that is not required to secure compensation pursuant to the AWCA may execute and file with the Oklahoma Workers' Compensation Commission.

"Aggregate excess insurance" means an insurance product that limits a group self-insurance association's annual aggregate liability to an agreed upon amount.

"Association" or **"Group Self-Insurance Association"** means a duly qualified group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

"Board" or **"Members' Supervisory Board"** means the supervisory board of members of an association.

"Cancellation short rate penalty" means a penalty imposed on the member for cancelling its policy before the expiration date of the policy.

~~**"Certificate of noncoverage"** or **"CNC"** means a certificate which may be issued by the Oklahoma Workers' Compensation Commission after proper application and reasonable investigation to a sole proprietor or the partners of a partnership who do not elect to be covered by the AWCA.~~

"Certified audit" means a financial audit performed by a certified public accountant, accompanied by the auditor's opinion regarding the audit.

"Claims reserves" means workers' compensation claim losses expected to be paid in the future, but does not include IBNR.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

"Common interest" means employers engaged in the same industry or members of an Oklahoma trade association that has been in business for at least five (5) years.

"Expense constant" means a flat charge included in a workers' compensation policy to cover the costs of issuing and servicing the policy.

"Experience modifier" means a modification to premium based on the claims history of the policyholder.

"IBNR" means incurred but not reported reserves. It includes a reserve for claims that have been incurred, but not yet reported to the individual own risk employer or group self-insurance association, as applicable, and reserves for adverse loss development on known claims.

"Incurred loss" means the total of the paid indemnity and medical losses plus claims reserves, reported by accident year.

"Insurance Department" means the Insurance Department of the State of Oklahoma.

"Joint and several liability" means mutual and individual responsibility of members for the liabilities of the association.

"Loss portfolio transfer" means the transfer of the liabilities of the association to an insurance carrier for an agreed upon premium.

"Member" means an individual member of an association.

"NCCI" means the National Council on Compensation Insurance, a national source for information on workers' compensation insurance, tools and services, and the provider of advisory ratemaking and statistical services in Oklahoma.

"Partnership" means a type of unincorporated business organization in which two or more individuals own the business and are equally liable for its debts.

"Pro forma financial statement" means a hypothetical financial statement showing revenues and expenses that may be recognized in the upcoming fiscal year.

"Proof of coverage" means the statutory filings of workers' compensation policy information to the NCCI.

"Scopes Manual" is a catalog of four-digit workers' compensation codes based on the nature of business and estimated risk to its workers.

"Self insured retention" means the individual own risk employer's or group self-insurance association's retained amount of risk under a specific excess insurance policy, before the liability is transferred to an insurance carrier.

"Sole proprietor" means an individual (or married couple) who is sole owner of a business that is neither a partnership nor an incorporated or limited liability company.

"Solvency" means a member whose assets are greater than its liabilities and who is capable of meeting its financial obligations to the association.

"Specific excess insurance" means an insurance product that limits the liability of an individual own risk employer or group self-insurance association specific occurrence liability to an agreed upon amount.

"Standard premium" means experience modified workers' compensation premium that has not been discounted.

"Statutory limits" means an insurance carrier's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.

"TPA" or **"Third-Party Administrator"** means any person defined in 36 O.S., § 1442 of the Third-Party Administrator Act as an "administrator".

"Unearned premium" means the share of the members' premiums applicable to the unexpired portion of the policy terms.

810:25-1-3. Proceedings related to permit actions

(a) The ~~Commission~~Permitting Services Division may ~~deny an application, refuse to issue or renew, or~~ revoke a Certificate of Noncoverage (Subchapter 5 of this Chapter), or refuse to issue or renew, or revoke a permit for Individual Own Risk Employer (Subchapter 9 of this Chapter), Group Self-Insurance Association (Subchapter 11 of this Chapter) or Third-Party Administrator (Subchapter 13 of this Chapter) as provided in this Chapter. ~~Proceedings related to such Commission actions shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.~~

(b) An applicant or permit holder may seek review of a decision rendered by the Permitting Services Division by filing with the Commission a request for hearing within ten (10) days of the date the decision was mailed to the applicant or permit holder. Proceedings related to permit actions shall be governed by this Section and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.

SUBCHAPTER 5. DOCUMENTATION OF EXEMPT STATUS

810:25-5-1. ~~Certificate of noncoverage~~Affidavit of exempt status requirements

(a) ~~To request a CNC as~~As authorized by 85A O.S. §36,~~an individual doing business as a sole proprietor or the partner of a partnership who does not elect to be covered by the AWCA and be deemed an employee thereunder, shall:~~ any individual or business entity that is not required to secure compensation under the AWCA, upon payment to the Commission of a nonrefundable filing fee of Fifty Dollars ($50.00), may execute and file an Affidavit of Exempt Status electronically at www.ok.gov/wcc or file an original and one (1) copy at the following address: Oklahoma Workers' Compensation Commission, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The affidavit shall be signed by the affiant under penalty of perjury. A copy of the Affidavit of Exempt Status form may be obtained from the Commission at the address set forth in this Subsection or the Commission's website.

~~(1) Submit a signed and completed Application for Certificate of Noncoverage on a form prescribed by the Commission, to the following address: Oklahoma Workers' Compensation Commission, Attention: INSURANCE DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The application shall be notarized and signed by the applicant under penalty of perjury. Illegible, incomplete or unsigned applications will not be considered and shall be returned. A copy of the application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website;~~

~~(2) Pay to the Commission a nonrefundable application fee of Fifty Dollars ($50.00) with the Application for Certificate of Noncoverage. The fee may be charged and shall be collected from each individual who applies for a CNC;~~

~~(3) Provide such substantiating documentation in support of the application as may be required by the Commission; and~~

~~(4) Verify that the applicant will notify the Commission in writing upon any change affecting the applicant's qualifications as provided in this Subsection.~~

(b) ~~The application shall be reviewed by the Commission's Insurance Division. If the application is determined to be sufficient, the Division will issue a Certificate of Noncoverage, for a period of two years. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time from the Division, the application will be denied~~An Affidavit of Exempt Status executed and filed as provided in this Rule shall expire at midnight two (2) years from the date of filing, unless earlier cancelled by the filing, in accordance with 85A O.S., § 36(D)(1)(b), of a Cancellation of Affidavit of Exempt Status (CC-Form-36C) upon changed circumstances that make securing compensation pursuant to the AWCA necessary.

810:25-5-3. ~~Renewal~~Affidavit of exempt status renewal process

An unexpired Affidavit of Exempt Status may be renewed by filing a new Affidavit of Exempt Status before expiration. The criteria for renewal ~~of a certificate of noncoverage~~ shall be the same as that for a new ~~applicant~~Affidavit of Exempt Status, as provided in 810:25-5-1(a).

[OAR Docket #19-662; filed 6-25-19]

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

1:2019-31.

EXECUTIVE ORDER 2019-31

I, J. Kevin Stitt, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff immediately through Thursday, August 8, at 5:00 p.m., as a mark of respect for the victims of the tragedies in El Paso, Texas, and Dayton, Ohio. Americans across the nation are united in calling upon God to bring comfort and healing to the victims, their families, and to the El Paso and Dayton communities, and justice to all those impacted by these tragic events.

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

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 August, 2019.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:
Michael Rogers
Secretary of State

[OAR Docket #19-720; filed 8-5-19]