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**Kevin Stitt, Governor**  
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# Submissions to Governor and Legislature

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

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**TITLE 460. DEPARTMENT OF MINES  
CHAPTER 25. OKLAHOMA EXPLOSIVES  
AND BLASTING RULES AND  
REGULATIONS**

*[OAR Docket #20-410]*

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

Subchapter 13. Performance Standards  
460:25-13-19. [AMENDED]

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

April 27, 2020

*[OAR Docket #20-410; filed 5-11-20]*

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# Emergency Adoptions

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

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

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next regular legislative session after its promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

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

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

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

[OAR Docket #20-413]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-31 [AMENDED]  
Subchapter 5. Individual Providers and Specialties  
Part 3. Hospitals  
317:30-5-42.20 [NEW]  
317:30-5-47 [AMENDED]  
317:30-5-47.6 [NEW]  
(Reference APA WF # 20-01)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

### ADOPTION:

March 30, 2020

### APPROVED BY GOVERNOR:

May 14, 2020

### EFFECTIVE:

Immediately upon Governor's approval

### APPROVED BY GOVERNOR:

May 14, 2020

### EXPIRATION:

Effective through September 14, 2021, unless superseded by another rule or disapproved by the Legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The agency requests emergency approval of rule revisions to its current hospital policy, in order to protect the public health, safety or welfare. The emergency approval of these rule revisions would allow the Oklahoma Health Care Authority (OHCA) to "carve-out" the cost of high-investment drug therapies from the current reimbursement methodologies of inpatient and outpatient hospital providers. The proposed revisions would allow hospital providers to receive a separate payment that accounts for the price of these drugs and allows members who are in need of these drugs to continue treatment.

### GIST/ANALYSIS:

These emergency revisions protect the public health, safety or welfare by allowing the Oklahoma Health Care Authority (OHCA) to adequately reimburse inpatient and outpatient hospital providers rendering

high-investment drug therapies to SoonerCare members and ensure members continue to have access to these therapies.

### CONTACT PERSON:

Sandra Puebla, 405-522-7270, Sandra.Puebla@okhca.org.

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

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 1. GENERAL SCOPE AND ADMINISTRATION

#### 317:30-3-31. Prior authorization for health care-related goods and services

(a) Under the ~~Oklahoma~~—SoonerCare program, there are health care-related goods and services that require prior authorization (PA) by the Oklahoma Health Care Authority (OHCA). PA is a process to determine if a prescribed good or service is medically necessary; it is not, however, a guarantee of member eligibility or of SoonerCare payment. All goods or services requiring PA will be authorized on the basis of information submitted to OHCA, including:

- (1) ~~the~~The relevant code, as is appropriate for the good or service requested (for example, Current Procedural Terminology (CPT) codes for services; Healthcare Common Procedure Coding System (HCPCS) codes, for durable medical equipment; or National Drug Codes (NDC), for drugs); and/or
- (2) ~~any~~Any other information required by OHCA, in the format as prescribed. The OHCA authorization file will reflect the codes that have been authorized.

(b) The OHCA staff will issue a determination for each requested good or service requiring a PA. The provider will be advised of that determination, either through the provider portal, or for requests made for out-of-state services, meals,

## Emergency Adoptions

mileage, transportation and lodging, by letter or other written communication. The member will be advised by letter. Policy regarding member appeal of a denied PA is available at Oklahoma Administrative Code (OAC) 317:2-1-2.

(c) The following is an in/exhaustive list of the goods and services that may require a PA, for at least some SoonerCare member populations, under some circumstances. This list is subject to change, with OHCA expressly reserving the right to add a PA requirement to a covered good or service or to remove a PA requirement from a covered good or service.

- (1) Physical therapy for children;
- (2) Speech therapy for children;
- (3) Occupational therapy for children;
- (4) High Tech Imaging (for ex. CT, MRA, MRI, PET);
- (5) Some dental procedures, including, but not limited to orthodontics (orthodontics are covered for children only);
- (6) Inpatient psychiatric services;
- (7) Some prescription drugs ~~and/or~~ physician administered, and/or high-investment drugs;
- (8) Ventilators;
- (9) Hearing aids (covered for children only);
- (10) Prosthetics;
- (11) High risk ~~OB~~ Obstetrical (OB) services;
- (12) Drug testing;
- (13) Enteral therapy (covered for children only);
- (14) Hyperalimentation;
- (15) Early and Periodic Screening, ~~Diagnosis~~ Diagnostic and Treatment (EPSDT) services, supplies, or equipment that are determined to be medically necessary for a child or adolescent, and which are included within the categories of mandatory and optional services in Section 1905(a) of Title XIX, regardless of whether such services, supplies, or equipment are listed as covered in ~~Oklahoma's~~ the Oklahoma Medicaid State Plan;
- (16) Adaptive equipment for persons residing in private ~~Intermediate Care Facilities for Individuals with Intellectual Disabilities~~ intermediate care facilities for individuals with intellectual disabilities (ICF/IID);
- (17) Some ancillary services provided in a ~~long term~~ long-term care hospital or in a long term care facility;
- (18) Rental of hospital beds, support surfaces, oxygen and oxygen related products, continuous positive airway pressure devices (CPAP and BiPAP), pneumatic compression devices, and lifts;
- (19) Allergy testing and immunotherapy;
- (20) Bariatric surgery;
- (21) Genetic testing;
- (22) Out-of-state services; and
- (23) Meals, travel, and lodging.

(d) ~~Providers should refer to the relevant Part of OAC 317:30-5 for additional, provider specific guidance on PA requirements. Providers may also refer to the OHCA Provider Billing and Procedure Manual, available on OHCA's website, and the SoonerCare Medical Necessity Criteria for Inpatient Behavioral Health Services Manual to see how and/or where to submit PA requests, as well as to find information about~~

~~documentation.~~ Providers should refer to the provider-specific Part for PA requirements. For additional PA information and submission requests, providers may refer to the OHCA Provider Billing and Procedure Manual and the SoonerCare Medical Necessity Criteria for Inpatient Behavioral Health Services Manual available at <https://okhca.org>.

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 3. HOSPITALS

#### **317:30-5-42.20. High-investment drugs - outpatient hospitals**

(a) The Oklahoma Health Care Authority (OHCA) designates certain high-investment drugs to be reimbursed separately pursuant to the Oklahoma Medicaid State Plan for members receiving services at an outpatient hospital.

(b) The list of OHCA-designated high-investment drugs is set forth on the Pharmacy page of the OHCA website, which is available at <https://okhca.org>. This list may be updated as deemed necessary.

(c) All high-investment drugs require prior authorization [refer to Oklahoma Administrative Code (OAC) 317:30-3-31], and the outpatient hospital stay continues to be subject to applicable medical necessity criteria requirements [refer to OAC 317:30-3-1(f)].

(d) OHCA-designated high-investment drugs provided to eligible members, when treated in out-of-state outpatient hospitals, may be reimbursed in the same manner as in-state hospitals. Out-of-state outpatient hospitals must meet applicable out-of-state conditions of payment set forth in OAC 317:30-3-89 through 317:30-3-92, and in the Oklahoma Medicaid State Plan.

#### **317:30-5-47. Reimbursement for inpatient hospital services**

Reimbursement will be made for inpatient hospital services in the following manner:

(1) Covered inpatient services provided to eligible SoonerCare members admitted to in-state acute care and critical access hospitals will be reimbursed the lesser of the billed charges or the Diagnosis Related Group (DRG) amount. In addition to the billed charges or DRG payment, whichever is less, an outlier payment may be made to the hospital for very high cost stays. Additional outlier payment is applicable if either the amount billed by the hospital or DRG payment, whichever applies, is less than a threshold amount of the hospital cost. Each inpatient hospital claim is tested to determine whether the claim qualified for a cost outlier payment. Payment is equal to a percentage of the cost after the threshold is met.

(2) The lesser of the billed charges or DRG amount and outlier, if applicable, represent full reimbursement for all non-physician services provided during the inpatient stay. Payment includes but is not limited to:

- (A) ~~laboratory~~Laboratory services;
  - (B) ~~prosthetic~~Prosthetic devices, including pace-makers, lenses, artificial joints, cochlear implants, implantable pumps;
  - (C) ~~technical~~Technical component on radiology services;
  - (D) ~~transportation~~Transportation, including ambulance, to and from another facility to receive specialized diagnostic and therapeutic services;
  - (E) ~~pre-admission~~Pre-admission diagnostic testing performed within ~~72~~seventy-two (72) hours of admission; and
  - (F) ~~organ~~Organ transplants.
- (3) Hospitals may submit a claim for payment only upon the final discharge of the patient or upon completion of a transfer of the patient to another hospital.
- (4) Covered inpatient services provided to eligible members of the ~~Oklahoma~~—SoonerCare program, when treated in out-of-state hospitals will be reimbursed in the same manner as in-state hospitals. Refer to OAC 317:30-3-90 and 317:30-3-91.
- (5) Cases which indicate transfer from one (1) acute care hospital to another will be monitored under a retrospective utilization review policy to help ensure that payment is not made for inappropriate transfers.
- (6) The transferring hospital will be paid the lesser of the calculated transfer fee or the DRG base payment amount for a non-transfer.
- (7) If the transferring or discharge hospital or unit is exempt from the DRG, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or units.
- (8) Covered inpatient services provided in out-of-state specialty hospitals may be reimbursed at a negotiated rate not to exceed ~~100%~~one-hundred percent (100%) of the cost to provide the service. Negotiation of rates will only be allowed when the OHCA determines that the specialty hospital or specialty unit provides a unique (non-experimental) service required by SoonerCare members and the provider will not accept the DRG payment rate. Prior authorization is required.
- (9) New providers entering the SoonerCare program will be assigned a peer group and will be reimbursed at the peer group base rate for the DRG payment methodology or the statewide median rate for per diem methods.
- (10) All inpatient services are reimbursed per the methodology described in this ~~section~~Section and/or as approved under the Oklahoma ~~State~~-Medicaid State Plan.
- (11) For high-investment drugs, refer to OAC 317:30-5-47.6.

**317:30-5-47.6. High-investment drugs - inpatient hospitals**

(a) The Oklahoma Health Care Authority (OHCA) designates certain high-investment drugs to be reimbursed separately pursuant to the Oklahoma Medicaid State Plan for members receiving services at an inpatient hospital.

- (b) The list of OHCA-designated high-investment drugs is set forth on the Pharmacy page of the OHCA website, which is available at <https://okhca.org>. This list may be updated as deemed necessary.
- (c) All high-investment drugs require prior authorization [refer to Oklahoma Administrative Code (OAC) 317:30-3-31], and the inpatient hospital stay continues to be subject to applicable medical necessity criteria requirements [refer to OAC 317:30-3-1(f)].
- (d) OHCA-designated high-investment drugs provided to eligible members, when treated in out-of-state inpatient hospitals, may be reimbursed in the same manner as in-state hospitals. Out-of-state inpatient hospitals must meet applicable out-of-state conditions of payment set forth in OAC 317:30-3-89 through 317:30-3-92, and in the Oklahoma Medicaid State Plan.

*[OAR Docket #20-413; filed 5-19-20]*

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

*[OAR Docket #20-415]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

- Subchapter 6. SoonerCare for Pregnant Women and Families with Children Part 6. Countable Income for MAGI 317:35-6-51 [AMENDED]
  - 317:35-6-55 [NEW]
  - Subchapter 10. Other Eligibility Factors for Families with Children and Pregnant Women Part 5. Income 317:35-10-26 [AMENDED]
- (Reference APA WF # 20-03)**

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007(C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; The Advancing Chronic Care, Extenders, and Social Services Act (ACCESS Act) which was included in Public Law No. 115-123 Section 53103; and 42 U.S.C. Section 1396a(e)(14)(K)

**ADOPTION:**

March 30, 2020

**EFFECTIVE:**

Immediately upon Governor's approval

**APPROVED BY GOVERNOR:**

May 14, 2020

**EXPIRATION:**

Effective through September 14, 2021, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The agency requests emergency approval of rule revisions to its SoonerCare countable income policy in order to avoid violation of federal law or regulation or other state law.

**GIST/ANALYSIS:**

These emergency revisions are necessary in order to comply with federal law. The Advancing Chronic Care, Extenders and Social Services Act, referred to as the ACCESS Act and included in Public Law No. 115-123 § 53103, changed the way qualified lottery winnings or qualified gambling

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winnings of \$80,000 and above, which are paid out in a single payout option, are counted in Modified Adjusted Gross Income (MAGI)-based determinations for purposes of Medicaid eligibility. Previous federal regulations and Oklahoma Administrative Code, required that all lump sum income, including lottery and gambling winnings, be counted as income only in the month received. Winnings will still be counted against the SoonerCare household as income in the month received; however, winnings of \$80,000 and above that are paid out in a single payout option, will now be counted in multiple months and in equal monthly installments against the individual household member receiving the winnings. Winnings greater than or equal to \$80,000, but less than \$90,000, are counted as income over 2 months, with an equal amount counted each month; winnings greater than or equal to \$90,000, but less than \$100,000, are counted as income over 3 months, with an equal amount counted in each month; and winnings greater than or equal to \$100,000 are counted as income over 3 months, with one additional month for every increment of \$10,000 in winnings received over \$100,000, with an equal amount counted in each month. The maximum period of time over which winnings may be counted is 120 months, which would apply to winnings greater than or equal to \$1,260,000. Qualified lottery winnings means winnings from a sweepstakes, lottery, or pool described in paragraph 3 of Section 4402 of the Internal Revenue Code of 1986 or a lottery operated by a multistate or multijurisdictional lottery association, including amounts awarded as lump sum payment. Qualified gambling winnings means monetary winnings from gambling, as defined by Section 1955 (b)(4) of Title 18 of the United States Code. Eligibility will be granted or restored to an individual who loses or is denied eligibility due to qualified lottery or gambling winnings if that individual proves that loss or denial of eligibility would result in undue hardship.

## CONTACT PERSON:

Sandra Puebla, 405-522-7270, Sandra.Puebla@okhca.org.

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

## SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

### PART 6. COUNTABLE INCOME FOR MAGI

#### 317:35-6-51. Exceptions to Internal Revenue Code rules

(a) The following sources of income are excluded from household income for SoonerCare eligibility under MAGI Modified Adjusted Gross Income (MAGI), regardless of whether they are included in MAGI in Section 36B of the Internal Revenue Code:

- (1) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and
- (2) The following types of American Indian / Alaska Native income:
  - (A) Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;
  - (B) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:

- (i) Rights of ownership or possession in any lands described in Paragraph (a)(2)(A) of this section; or
  - (ii) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
- (C) Distributions resulting from real property ownership interests related to natural resources and improvements:
- (i) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or
  - (ii) Resulting from the exercise of federally-protected rights relating to such real property ownership interests;
- (D) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;
- (E) Student financial assistance provided under the Bureau of Indian Affairs education programs; and
- (F) Distributions from Alaska Native Corporations and Settlement Trusts.

(b) Amounts received as a lump sum are counted as income only in the month received (see also OAC Oklahoma Administrative Code (OAC) 317:35-10-26), with the exception of certain lottery or gambling winnings as specified in OAC 317:35-6-55. If a lump sum amount is received from an income source that is not counted in MAGI according to section 36B(d)(2)(B) of the Internal Revenue Code or the exceptions listed in this section, the amount is not counted.

#### 317:35-6-55. Treatment of qualified lottery or qualified gambling winnings

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

(1) **"Qualified lottery winnings"** means winnings from a sweepstakes, lottery, or pool described in paragraph three (3) of Section 4402 of the Internal Revenue Code of 1986 or a lottery operated by a multistate or multijurisdictional lottery association paid out in a single payout and not in installments over a period of time.

(2) **"Qualified gambling winnings"** means monetary winnings from gambling, as defined by Section (§) 1955(b)(4) of Title 18 of the United States Code (U.S.C.).

(3) **"Undue hardship"** means circumstances resulting from a loss or denial of SoonerCare eligibility that would deprive an individual of medical care, such that the individual's health or life would be endangered, or that would deprive the individual or his or her financially dependent family members of food, clothing, shelter, or other necessities of life.

(b) **Income determinations.** In accordance with 42 U.S.C. § 1396a(e)(14)(K), qualified lottery and gambling winnings shall be considered as income in determining the financial eligibility of individuals whose eligibility is determined based on

the application of Modified Adjusted Gross Income (MAGI), as follows:

- (1) Winnings less than \$80,000 are counted in the month received;
- (2) Winnings greater than or equal to \$80,000, but less than \$90,000, are counted as income over two (2) months, with an equal amount counted in each month;
- (3) Winnings greater than or equal to \$90,000, but less than \$100,000, are counted as income over three (3) months, with an equal amount counted in each month;
- (4) Winnings greater than or equal to \$100,000 are counted as income over three (3) months, with one (1) additional month for every increment of \$10,000 in winnings received over \$100,000, with an equal amount counted in each month; and
- (5) The maximum period of time over which winnings may be counted is one hundred and twenty (120) months, which would apply to winnings greater than or equal to \$1,260,000.

(c) **Treatment of household members.** Qualified lottery and gambling winnings shall be counted as household income for all household members in the month of receipt; however, the requirement to count qualified lottery and gambling winnings in household income over multiple months applies only to the individual receiving the winnings.

(d) **Undue hardship.** An individual who loses or is denied eligibility due to qualified lottery or gambling winnings may timely file a member appeal, in accordance with Oklahoma Administrative Code 317:2-1-2. If, as part of that appeal, the individual proves by a preponderance of the evidence that loss or denial of eligibility would result in undue hardship, eligibility shall be restored or approved, provided all other conditions of eligibility have been met.

(e) **Notice.** SoonerCare members or applicants who are determined financially ineligible due to the counting of lottery or gambling winnings will receive a notice of the date on which the lottery or gambling winnings will no longer be counted for eligibility purposes. The notice will also inform the member or applicant of the undue hardship exemption and of their opportunity to enroll in a Qualified Health Plan on the Federally Facilitated Exchange.

**SUBCHAPTER 10. OTHER ELIGIBILITY FACTORS FOR FAMILIES WITH CHILDREN AND PREGNANT WOMEN**

**PART 5. INCOME**

**317:35-10-26. Income**

- (a) **General provisions regarding income.**
  - (1) The income of categorically needy individuals who are related to the children, parent or caretaker relative, SoonerPlan, or Title XIX and XXI pregnancy eligibility groups does not require verification, unless questionable. If the income information is questionable, it must be verified. If there appears to be a conflict in the information

provided, the worker must investigate the situation to determine if income verification is necessary.

(2) All available income, except that required to be disregarded by law or OHCA's policy, is taken into consideration in determining need. Income is considered available both when actually available and when the applicant or member has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. The member is responsible for reporting all income, the source, amount and how often received.

(A) Income received on behalf of a member of the benefit group by another individual such as, but not limited to, a guardian or conservator, is considered available to the benefit group.

(B) Money received and used for the care and maintenance of a third party who is not included in the benefit group is not counted as income if it can be identified and verified as intended for third party use.

(C) If it appears any member of the benefit group or an individual whose income is considered when determining eligibility is eligible for any type of income or benefits, the benefit group must be notified in writing by the Oklahoma Health Care Authority (OHCA). The notice must contain the information that failure to apply for and take all appropriate steps to obtain such benefits within ten (10) days from the date of the notice will result in a determination of ineligibility. An application for Supplemental Security Income (SSI) is not required.

(D) If the member and spouse are living together or they are living apart but there has not been a clear break in the family relationship, income received by either spouse and income received jointly is considered as family income. Income cannot be diverted to a household member who is not included in the household size for health benefits. Consideration is not given to a SSI recipient's income in computing eligibility for the AFDC or Pregnancy related unit. The ~~MAGI~~ **Modified Adjusted Gross Income (MAGI)** methodology rules determine whose income is considered in a particular household for MAGI eligibility groups as defined in ~~OAC~~ **Oklahoma Administrative Code (OAC) 317:35-6-1.**

(E) Income which can reasonably be anticipated to be received is considered to be available for the month its receipt is anticipated.

(F) Income produced from resources must be considered as unearned income.

(3) Income that must be verified is verified by the best available information such as pay stubs presented by the member or an interview with the employer. If OHCA is unable to verify income through the Employment Securities Commission, then pay stubs may only be used for verification if they have the member's name and/or social security number indicating that the pay stubs are in fact

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the member's wages. The stubs should also include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required. The worker verifies medical insurance which may be available at the same time that income is verified. When a member of the benefit group accepts employment and has not received any wages, verification (if necessary) of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer and provided to OHCA within ten (10) days. Income which is expected to be received during a month is considered available to the benefit group and is counted in determining eligibility for the month of receipt.

(4) Monies received in a lump sum from any source are considered income in the month received, with the exception of certain lottery or gambling winnings as specified in OAC 317:35-6-55. Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment. Exception: lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age eighteen (18) are excluded as income. The interest income generated from dedicated bank accounts is also excluded.

(A) Whether a source of income is countable for MAGI eligibility groups is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(B) Whether a source of income is countable is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(C) When a lump sum is received by a stepparent not included in the household size, only the stepparent's contribution is considered in accordance with the stepparent's liability policy. Income received by a stepparent is considered in accordance with MAGI household and income counting rules.

(D) When a third party reveals that a lump sum payment has been received or is expected to be received by the applicant or member, adverse action notification is given or mailed to the applicant/member and appropriate action taken.

(E) Recurring lump sum income received from any source for a period covering more than one (1) month, that is received in a lump sum recurrently (such as annual rentals from surface or minerals, Windfall Profits tax refund, etc.) is prorated over a period of time it is intended to cover, beginning with the month of receipt of a lump sum payment.

(F) Net income from oil and gas production (gross minus production taxes withheld), received in varying amounts on a regular or irregular basis for the past six (6) months, will be averaged and considered as income for the next six (6) months. In instances where an applicant or a member receives new income from oil and gas production and verification for the past six (6) months is not available, the worker accepts the

available verification and averages over the period of time intended to cover. Net income may be verified by seeing the individual's production check stub, or by contacting the oil and gas company. Whether a source of income is countable is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(5) Income that is based on the number of hours worked, as opposed to income based on regular monthly wages, must be computed as irregular income. The income received irregularly or in varying amounts will be averaged using the past two (2) months to establish the amount to be anticipated and considered for prospective budgeting.

(6) MAGI household rules are used to determine whether a caretaker relative or stepparent is included in a household.

(A) MAGI household and income counting rules are used to determine whether a caretaker relative and his/her spouse or a stepparent are included in the household and whether their income is considered for the children.

(B) MAGI household and income counting rules are used to determine whose income is considered and whether that income is counted. If an individual is eligible in the parent or caretaker relative group, his/her spouse, if living with him/her, is also related to the parent or caretaker relative group.

(7) A stepparent, if living with the parent or caretaker relative, can also be related to the parent or caretaker relative group, regardless of whether the parent is incapacitated or not in the home.

(8) MAGI household and income counting rules are used to determine whose income is considered and whether that income is counted.

(b) **Earned income.** The term "earned income" refers to monies earned by an individual through the receipt of wages, salary, commission or profit from activities in which the individual is engaged as self-employed or as an employee. Whether income is countable for MAGI eligibility groups is determined using MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(1) **Earned income from self-employment.** For MAGI eligibility groups, the calculation of countable self-employment income is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(2) **Earned income from wages, salary or commission.** Countable income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(3) **Earned income from work and training programs.** Countable income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(4) **No individual earned income exemptions.** No earned income exemptions are subtracted to determine countable income for MAGI eligibility groups. The only deduction applied to determine net countable income

under the MAGI methodology is the deduction of five percent (5%) of the FPL for the individual's household size as defined in OAC 317:35-6-39.

(5) **Formula for determining the individual's net earned income for MAGI eligibility groups.** To determine net income, see MAGI rules in OAC 317:35-6-39.

(c) **Unearned income.** Countable earned and unearned income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(d) **Income disregards.** For MAGI eligibility groups, whether a source of income is disregarded is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(g) In computing monthly income, cents will be rounded down at each step. Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

- (1) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.
- (2) **Weekly.** Income received weekly is multiplied by 4.3.
- (3) **Twice a month.** Income received twice a month is multiplied by two (2).
- (4) **Biweekly.** Income received every two (2) weeks is multiplied by 2.15.

*[OAR Docket #20-415; filed 5-19-20]*

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

*[OAR Docket #20-414]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 6. Soonercare for Pregnant Women and Families with Children  
Part 7. Certification, Redetermination and Notification  
317:35-6-60 [AMENDED]  
317:35-6-60.2 [NEW]  
(Reference APA WF # 20-02)

**AUTHORITY:**  
The Oklahoma Health Care Authority Act, Section 5007(C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; SoonerCare 1115 Waiver 11-W-00048/6; and 42 C.F.R. Section 435.915

**ADOPTION:**  
March 30, 2020

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

**APPROVED BY GOVERNOR:**  
May 14, 2020

**EXPIRATION:**

Effective through September 14, 2021, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The agency requests emergency approval of rule revisions to its SoonerCare eligibility and certification policies in order to avoid violation of federal law or regulation or other state law.

**GIST/ANALYSIS:**

These emergency revisions are necessary in order to comply with federal regulations at 42 CFR Section 435.915 (Effective date), which says the agency must make eligibility for Medicaid effective no later than the third month before the month of application if the individual: (1) Received Medicaid services, at any time during that period, of a type covered under the plan; and (2) Would have been eligible for Medicaid at the time he received the services if he had applied. Oklahoma had been granted authority to waive retroactive eligibility for children and pregnant women; however, in the latest renewal of the 1115(a) waiver effective August 31, 2018, this authority was removed by the Center for Medicaid and Medicare Services (CMS), thus mandating the Oklahoma Health Care Authority to begin providing retroactive coverage to children and pregnant women effective January 1, 2019. The retroactive coverage is for the three months directly prior to the date of application if the applicant meets the requirements specified in the regulation and rules.

**CONTACT PERSON:**

Sandra Puebla, 405-522-7270, Sandra.Puebla@okhca.org.

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

**SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN**

**PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION**

**317:35-6-60. Certification for SoonerCare for pregnant women and families with children**

~~An individual determined eligible for SoonerCare may be certified for a medical service provided on or after the date of certification. The period of certification may not be for a retroactive period unless otherwise prior approved by OHCA. The individual who is categorically needy and related to pregnancy related services retains eligibility for the period covering prenatal, delivery and postpartum periods without regard to eligibility for other household members in the case. Eligibility during the postpartum period does not apply to women receiving pregnancy related coverage under Title XXI.~~

**(a) General rules of certification.**

(1) An individual determined eligible for SoonerCare may be certified for a prospective period of coverage on or after the date of certification.

(2) In accordance with 42 Code of Federal Regulations (C.F.R.) § 435.915 and Oklahoma Administrative Code

## Emergency Adoptions

(OAC) 317:35-6-60.2, an individual may also be determined eligible and certified for a retroactive period of coverage during the three (3) month period directly prior to the date of application, if the individual received covered medical services at any time during that period, and would have been eligible for SoonerCare at the time he or she received the services, regardless of whether the individual is alive when application for Medicaid is made. An individual may be eligible for the retroactive period even though ineligible for the prospective period.

(3) The individual who is categorically needy and related to pregnancy-related services retains eligibility for the period covering prenatal, delivery, and postpartum periods without regard to eligibility for other household members in the case. Eligibility during the postpartum period does not apply to women receiving pregnancy-related coverage under Title XXI.

**(4b) Certification as a TANF (cash assistance) recipient.** A categorically needy individual who is determined eligible for TANF is certified effective the first day of the month of TANF eligibility.

**(2c) Certification of non-cash assistance individuals related to the children and parent and caretaker relative groups.** The certification period for the individual related to the children or parent and caretaker relative groups is ~~12~~twelve (12) months. The certification period can be less than ~~12~~twelve (12) months if the individual:

~~(A1)~~ is certified as eligible in a money payment case during the 12-month period;

~~(B2)~~ is certified for long-term care during the 12-month period;

~~(C3)~~ becomes ineligible for SoonerCare after the initial month; or

~~(D4)~~ becomes financially ineligible.

~~(iA)~~ If an income change after certification causes the case to exceed the income standard, the case is closed.

~~(iiB)~~ Individuals, however, who are determined pregnant and financially eligible continue to be eligible for pregnancy-related services through the prenatal, delivery and postpartum period, regardless of income changes. A pregnant individual included in a TANF case which closes continues to be eligible for pregnancy related services through the postpartum period.

**(3d) Certification of individuals related to pregnancy-related services.** The certification period for the individual related to pregnancy-related services will cover the prenatal, delivery and postpartum periods. The postpartum period is defined as the two (2) months following the month the pregnancy ends. Financial eligibility is based on the income received in the first month of the certification period. No consideration is given to changes in income after certification.

**(4e) Certification of newborn child deemed eligible.**

~~(A1)~~ Every newborn child is deemed eligible on the date of birth for SoonerCare when the child is born to a woman who is eligible for and enrolled in pregnancy-related services as categorically needy. The newborn child

is deemed eligible through the last day of the month the newborn child attains the age of one (1) year. The newborn child's eligibility is not dependent on the mother's continued eligibility. The mother's coverage may expire at the end of the postpartum period; however, the newborn child is deemed eligible until age one (1). The newborn child's eligibility is based on the original eligibility determination of the mother for pregnancy-related services, and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

~~(B2)~~ The newborn child is deemed eligible for SoonerCare as long as he/she continues to live in Oklahoma. ~~No~~In accordance with 42 C.F.R. § 435.117, no other conditions of eligibility are applicable, including social security number enumeration, child support referral, and citizenship and identity verification. However, it is recommended that social security number enumeration be completed as soon as possible after the newborn child's birth. It is also recommended that a child support referral be completed, if needed, as soon as possible and sent to the Oklahoma Child Support Services (OCSS) division at ~~OKDHS~~DHS. The referral enables child support services to be initiated.

~~(C3)~~ When a categorically needy newborn child is deemed eligible for SoonerCare, he/she remains eligible through the end of the month that the newborn child reaches age one (1). If the child's eligibility is moved from the case where initial eligibility was established, it is required that the newborn receive the full deeming period. The certification period is shortened only in the event the child:

~~(iA)~~ loses Oklahoma residence; or

~~(iiB)~~ expires.

~~(D4)~~ A newborn child cannot be deemed eligible when the mother's only coverage was presumptive eligibility, and continued eligibility was not established.

### **317:35-6-60.2. Retroactive eligibility**

(a) Retroactive eligibility, as outlined in this section, shall be available to pregnant women and/or members under the age of nineteen (19). For retroactive eligibility rules related to other SoonerCare population groups, refer to Oklahoma Administrative Code (OAC) 317:35-7-60(b).

(b) In addition to the period of eligibility specified in OAC 317:35-6-60, an applicant, or individuals within the applicant's household, shall be eligible for SoonerCare benefits up to three (3) months prior to the date of application if all of the following requirements are met:

(1) The individual for whom retroactive coverage is being requested would have been eligible for SoonerCare coverage if an application for SoonerCare had been made during the retroactive month.

(A) The individual does not have to be eligible for the month of application to be found eligible for one of the three (3) retroactive months.

(B) The eligibility factors (e.g. income, residency, household composition, etc.) are evaluated separately

for each retroactive month for which retroactive eligibility is being requested.

(2) The applicant completes the retroactive eligibility application form and provides, within six (6) months of the date the services were provided, documentation for verification purposes as requested by SoonerCare.

(3) The individual applying for retroactive coverage states that the individual for whom retroactive coverage is being requested received reimbursable SoonerCare services which were provided by a SoonerCare-contracted provider during the retroactive month.

(4) An applicant cannot be approved for retroactive coverage for a month in which his or her application was previously denied.

(c) Per 42 Code of Federal Regulations (C.F.R.) § 435.915(b), if an applicant is determined to be eligible for retroactive coverage at any time during the requested retroactive month, then coverage will begin on the first day of the month and be effective for the entire month.

(d) If the applicant is applying for SoonerCare benefits due to pregnancy, then the applicant must have been pregnant during the requested retroactive month.

(e) Regardless of retroactive eligibility being granted, the requirement for the claim to be filed timely, per OAC 317:30-3-11, is still in effect.

(f) Retroactive coverage for SoonerCare health services received during a retroactive month will be secondary to any third-party which has primary responsibility for payment. If the individual eligible for retroactive coverage has already paid for the health services, the provider may refund the payment and bill SoonerCare in accordance with the timely filing requirements in OAC 317:30-3-11.

(g) Retroactive coverage for SoonerCare reimbursable health services that require prior authorization shall not be denied solely because of a failure to secure prior authorization. Medical necessity, however, must be established before reimbursement can be made.

(h) Denials of requests for retroactive eligibility may be appealed in accordance with OAC 317:2-1-2(d)(1)(F).

*[OAR Docket #20-414; filed 5-19-20]*



# 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

**1:2020-19.**

### EXECUTIVE ORDER 2020-19

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 from 8:00 a.m. until 5:00 p.m. on Monday, May 25, 2020, in recognition of Memorial Day. The men and women who serve in our nation's Armed Services exemplify the highest form of citizenship, and on Memorial Day, we pay tribute to those Americans who laid down their lives to protect the interests of our country and defend freedom.

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 22nd day of May, 2020.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:  
Michael Rogers  
Secretary of State

*[OAR Docket #20-416; filed 5-22-20]*

**1:2020-20.**

### EXECUTIVE ORDER 2020-20

On May 29<sup>th</sup>, the 6,338<sup>th</sup> case of a novel coronavirus ("COVID-19"), was confirmed in the State of Oklahoma. As noted in a previous Executive Order, the United States Centers for Disease Control and Prevention has identified the potential public health threat posed by COVID-19 as "high" both globally and in the United States. In addition, on March 14, 2020, the President of the United States declared a national health emergency in the United States as a result of the national spread of COVID-19. On March 15, 2020, I issued Executive

Order 2020-07, which was last amended in Eighth Amended Executive Order 2020-07, declaring an emergency caused by the impending threat of COVID-19 to the people of this State and the public's peace, health, and safety. Further, on April 2, 2020, I declared a health emergency in the State of Oklahoma as defined in 63 O.S. § 6104 of the Oklahoma Statutes, which declaration was renewed on May 1, 2020, but which was terminated by the Oklahoma Legislature effective May 30, 2020.

As COVID-19's impact continues to affect our State and its citizens, it is important to continue to take measures to protect all Oklahomans against this threat. Therefore, I believe, after consultation with numerous health experts within my administration, it is still necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State and to cooperate with the Federal government with respect to carrying out emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

In view of the foregoing, I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare and order the following:

1. There is hereby declared an emergency caused by the threat of COVID-19 to the people of this State and the public's peace, health, and safety. The counties included in this declaration are:

*All 77 Oklahoma Counties*

2. The State Emergency Operations Plan has been activated, and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to prepare for and respond to COVID-19 and to protect the health and safety of the public. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

3. State agencies, in responding to this emergency, may make necessary emergency acquisitions to fulfill the purposes of this declaration. If using a P-Card to make such acquisitions, agencies may purchase the necessary acquisitions without regard to the current P-Card policy limitation of \$5,000.00

## Executive Orders

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purchase limit. Agencies may make the necessary emergency acquisitions without the requirement to follow bidding requirement/limitations on such emergency acquisitions, without the need to purchase from State Use Vendors, or to purchase from mandatory Statewide contracts. Such necessary emergency purchases shall be capped at \$250,000.00 per transaction. All such purchases must be readily identifiable as such, as following the conclusions of this threat, all such necessary emergency acquisitions will be audited to determine if they were made for emergency purposes.

4. Effective immediately, a moratorium is placed on all out-of-state travel for all employees and officers of agencies that is paid for, in whole or in part, by the State of Oklahoma. This moratorium shall apply to all travel expenses not already incurred as of the date of this Order. Any state employee or officer seeking an exception to this moratorium may submit a written request to the Governor, who shall have the sole discretion to approve or deny the request.

5. State agencies, in responding to this emergency, may employ additional staff without regard to the classification requirements of such employment.

6. The requirement in Amended Executive Order 2019-3 that the Chief Administrative Officer request and obtain approval from the Cabinet Secretary for an exemption to the personnel freeze for agencies under the Secretary of Health and Mental Health shall be waived.

7. State agencies shall continue to follow guidance for interaction with the public provided by the Oklahoma Department of Health.

8. Emergency responders employed by the State of Oklahoma who are correctional officers, law enforcement officers, and fire personnel shall not be excluded from the application of and benefits under the Emergency Paid Sick Leave Act of the Families First Coronavirus Response Act (FFCRA) if:

a. They are subject to a coronavirus quarantine or isolation order;

b. They have been advised by a healthcare provider to self-quarantine due to coronavirus concerns; or

c. They are experiencing symptoms of coronavirus and are seeking a medical diagnosis.

In addition, I direct as follows:

1. All State agencies shall continue to transmit a clear delegation of authority for state agency directors and designate an Emergency Management Liaison.

2. All State agencies shall establish and, if necessary, implement a remote work policy that balances the safety and welfare of state employees with the critical services they provide.

3. All State agencies shall encourage Oklahomans interacting with agency services to utilize online options whenever possible.

4. All State agencies shall ensure continued compliance with Executive Order 2019-13, which limits non-essential out-of-state travel.

5. All State agencies shall promulgate any emergency rules necessary to respond to the emergency and to comply with the directives contained herein.

6. All occupational licenses issued by any agency, board, or commission of the State of Oklahoma that expire during this emergency shall be extended. All occupational licenses extended during this Order will expire fourteen (14) days following the withdrawal or termination of this Order.

7. Hospitals and Physician Clinics (collectively referred to as "hospitals") operating in the State shall cooperate with and respond to all requests for critical data from the Oklahoma State Department of Health ("OSDH"), as applicable to the services they provide. This shall include, but will not be limited to, the daily submission, no later than noon, of critical data in a manner and format prescribed by OSDH. Critical Data shall include, but not be limited to:

a. The number of available (i) ICU beds, (ii) medical surgery beds, (iii) operating room beds, (iv) pediatric beds, (v) PICU beds, (vi) ventilators, (vii) anesthesia machines capable of patient ventilation, (viii) ventilator connecting circuits, (ix) patient interfaces, (x) negative flow rooms, (xi) and overall occupancy status;

b. COVID-19 Test Availability, as measured by the number of COVID-19 testing kits available for use at the hospital;

c. The number of (i) positive patients and persons under investigation in the hospital receiving treatment and (ii) positive patients and persons under investigation sent home for self-quarantine; and

d. Personal Protective Equipment stock on hand.

8. Every public or private entity that is utilizing, or has utilized, an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to Oklahoma State Department of Health (OSDH), as well as to the local health department, daily reports of all test results, both positive and negative, the number of test supplies ordered, the number of test supplies available, the number of samples/specimens received and pending processing, and timeframe of test completion, for all days from the date hereof forward. In addition, OSDH shall promptly share this information with the CDC.

9. The OSDH shall provide daily an aggregated summary of the information requested in the preceding paragraphs to the Office of the Governor by 3:00 p.m.

10. Telemedicine shall be used to maximum potential and shall be allowed for non-established patients for the purposes of the COVID-19 response. The preexisting patient relationship requirement for telemedicine, as required by 59 O.S. § 478.1, only applies to the prescribing of opiates and other controlled dangerous substances. 59 O.S. § 478.1 already allows the physician to see patients using telemedicine without the prior establishment of the physician patient relationship. Nothing in this Order shall waive 59 O.S. § 478.1 (C) for the purpose of prescribing opiates and other controlled dangerous substances reference therein.

11. The requirement that an individual be unemployed for a waiting period of one (1) week before benefits are paid, as required by 40 O.S. § 2-206, is hereby waived.

12. Oklahoma State regulations requiring Clinical Laboratory Improvement Amendment (CLIA) certification for testing laboratories are hereby suspended for the universities named below and for the narrow purposes described herein. During this suspension, laboratories operated by or through the University of Oklahoma, including the OU Medicine Laboratory, and Oklahoma State University are authorized to conduct testing and testing-related activities in response to the COVID-19 pandemic. Further, the Oklahoma Commissioner of Health, acting through and on behalf of OSDH, is hereby authorized to contract with the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, the Board of Regents for the University of Oklahoma, and/or their constituent agencies and the OU Medicine Laboratory, to perform laboratory tests and test-related activities, without regard to CLIA certification requirements, as necessary to detect and report COVID-19 infection in compliance with applicable law. The Commissioner of Health is authorized to negotiate and execute any and all agreements and terms necessary to execute and implement this provision.

13. Unless otherwise addressed in the Open Up and Recover Safely (OURS) Plan on the Department of Commerce website, adults over the age of sixty-five (65) and people of any age who have serious underlying medical conditions, collectively referred to as "vulnerable individuals," should stay in their home or place of residence except for working in a critical infrastructure sector, as more particularly described herein, and conducting essential errands. Essential errands shall mean those errands which are critical to everyday life and includes obtaining medication, groceries, gasoline, and visiting medical providers. The vulnerable population is encouraged to use delivery and/or curbside services whenever available.

14. Unless otherwise specified in the Open Up and Recover Safely (OURS) Plan on the Oklahoma Department of Commerce website, individuals should follow Centers for

Disease Control (CDC) guidelines for social distancing and gathering in groups.

15. All businesses should adhere to the statewide Open Up and Recover Safely (OURS) Plan as provided on the Oklahoma Department of Commerce website.

16. Except for end-of-life situations, visitors are prohibited from entering and visiting patients and residents at nursing homes, long-term care facilities, and retirement homes.

17. All delivery personnel including package, floral, and food delivery shall, at the request of a hospital, clinic, long-term care facility, or childcare facility submit to a screening prior to delivering goods. Such screening shall include a temperature check and may include a short questionnaire about potential exposure. Additionally, package delivery drivers must take their own temperature daily and shall not deliver packages if it registers over 100.4 degrees Fahrenheit. Questionnaires shall include questions about recent travel to areas with significant community spread and personal contact with individuals who have tested positive for COVID-19.

18. As supporting front-line healthcare workers is essential to our battle against COVID-19, front-line healthcare workers and their children, who have not tested positive for COVID-19 and are not otherwise exhibiting the symptoms thereof, shall not - simply because they are healthcare workers or children of healthcare workers - be discriminated against in housing or childcare services.

19. Any statutory or rule-based time requirements for completing training and becoming certified as a peace officer for duly appointed or elected peace officers during the existence of this emergency are hereby waived during the period of the emergency and for thirty days after the emergency is declared to be over.

20. Any requirements that county reserve deputies, municipal reserve officers, or other duly appointed reserve peace officers in this State be CLEET-certified prior to serving in an individual capacity or be accompanied by a CLEET-certified peace officer prior to becoming CLEET-certified are hereby waived during the period of the emergency and for thirty days after the emergency is declared to be over. Any such reserve deputy, municipal reserve officer, or other duly appointed reserve peace officer must be commissioned and authorized by his or her appointing agency's head or designee before being allowed to work as a peace officer under this provision.

21. I hereby direct all persons who enter the State of Oklahoma from another state or country to follow CDC travel guidelines found at <https://coronavirus.health.ok.gov/travel>.

22. All local educational agencies shall to the greatest extent practicable, continue to pay their employees and contractors for the remainder of the contracted period of the 2019-20 fiscal year, and in furtherance of this intent the State

## Executive Orders

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hereby authorizes accredited public school districts to pay support staff for the remainder of their contracted period for the 2019-20 fiscal year and waives any statutory or rule-based time limitations on which support personnel (as defined in 70 O.S. § 1-116) may accumulate or receive leave for the 2019-20 fiscal year.

23. I direct the Oklahoma Department of Agriculture, Food, and Forestry as follows:

a. Assist in the depopulation of any animals that are unable to be processed at available processing facilities due to COVID-19.

b. Assist in the disposal of animal carcasses resulting from the euthanasia in a manner that protects the environment, does not create a public health hazard, does not result in contamination of public or private drinking water supplies, and ensures watersheds and groundwater are adequately protected pursuant to 2 O.S. § 20-10(B).

c. Utilize all necessary equipment and manpower available and to freely move the equipment and manpower across state lines in cooperation with bordering states.

d. Cooperate with appropriate agencies, including but not limited to Oklahoma Department of Transportation, Oklahoma Department of Public Safety, and Oklahoma Department of Environmental Quality to ensure roadways are protected and all solid wastes are managed and disposed of appropriately.

e. Ensure ease of licensing, including the use of umbrella licensing, for vehicles utilized to move animal carcasses.

Further, I hereby order the temporary suspension of the following as they apply to vehicles in the support efforts:

1. The cost and fees of oversize/overweight permits required of carriers whose sole purpose is transportation of materials, equipment, and supplies used for recovery/relief efforts which require an overweight permit under Title 47 of Oklahoma statutes.

2. By execution of this Order, motor carriers and drivers providing direct assistance in support of relief efforts related to the COVID-19 outbreaks are granted emergency relief from Parts 390 through 399 of Title 49 Code of Federal Regulations, except as restricted herein. Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services, such as medical care, or essential supplies such as food, related to COVID-19 outbreaks during the emergency.

a. This Emergency Declaration provides regulatory relief for commercial motor vehicle operations that are providing direct assistance in support of emergency relief efforts related to the COVID-19 outbreaks, including transportation to meet immediate needs for: (1) medical supplies and equipment

related to the testing, diagnosis and treatment of COVID-19; (2) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; (3) food for emergency restocking of stores; (4) equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19; (5) persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; (6) persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response; (7) fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum); and (8) livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested.

b. Direct assistance does not include routine commercial deliveries, or transportation of mixed loads that include essential supplies, equipment and persons, along with supplies, equipment and persons that are not being transported in support of emergency relief efforts related to the COVID-19 outbreaks.

c. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo or provide services that are not in support of emergency relief efforts related to the COVID-19 outbreaks or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. 49 CFR 390.23(b). Upon termination of direct assistance to emergency relief efforts related to the COVID-19 outbreaks, the motor carrier and driver are subject to the requirements of 49 CFR Parts 390 through 399, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390 through 399. However, if the driver informs the motor carrier that he or she needs immediate rest, the driver must be permitted at least 10 consecutive hours off duty before the driver is required to return to the motor carrier's terminal or the driver's normal reporting location. Once the driver has returned to the terminal or other location, the driver must be relieved of all duty and responsibilities and must receive a minimum of 10 hours off duty if transporting property, and 8 hours if transporting passengers.

3. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission.

4. The requirements for licensing/registration authority as required by the Oklahoma Tax Commission.

Nothing contained in this Order shall be construed as an exemption from the Controlled Substance and Alcohol Use and testing requirements. (49 C.F.R. part 382), the Commercial Driver License requirements (49 C.F.R. part 383), the Financial Responsibilities requirements (49 C.F.R. part 387), or any other portion of the regulations not specifically identified herein. Motor carriers that have an Out-of-Service Order in

effect cannot take advantage of the relief from regulation that this declaration provided.

***This Order shall be effective until the end of thirty (30) days after the filing of this Order.***

Copies of this Executive Order shall be distributed to the Director of Emergency Management, the Oklahoma State Health Commissioner, the Commissioner of the Department of Public Safety, the Director of the Office of Management and Enterprise Services, the Oklahoma Tax Commission, the Oklahoma Corporation Commission who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 30<sup>th</sup> day of May, 2020.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:  
Michael Rogers  
Secretary of State

*[OAR Docket #20-418; filed 6-1-20]*

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