



STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

I/T/U Public Notice 2013-01

January 4, 2013

RE: Oklahoma Health Care Authority (OHCA) Proposed Rule Changes for State Health Programs

Dear Tribal Representative:

The purpose of this letter is to give you notice of proposed rule changes that will be reviewed at the Medical Advisory Committee (MAC) meeting held on January 17th, 2013. As you are aware, there will also be an in-person tribal consultation at OHCA regarding these rules on January 9th. OHCA is committed to active communication with Tribal Governments during the OHCA decision-making and priority-setting process and therefore keeps you apprised of all proposed rule changes.

Enclosed is a summary of the currently proposed rule changes for your review. The summary describes the purpose of each rule change and the anticipated impact on those affected. To view the complete proposal for the January 17th MAC, you can visit www.okhca.org/macagenda.

Please note that these are only proposed rule changes and have not yet taken effect. Before implementation, new rule changes must obtain budget authorization, federal approval (if applicable), OHCA Board approval, and the governor's approval.

Additionally, OHCA is now posting all proposed rule changes on the Agency's public website www.okhca.org/rule-changes. The proposed rule changes page is designed to give all constituents and stakeholders an opportunity to review and make comments regarding upcoming rule changes.

To ensure that you stay apprised of proposed rule changes, you may sign up for web alerts for the page and you will automatically be notified when any new rules are posted for comment.

OHCA values consultation with Tribal Governments and will provide your representatives a reasonable amount of time to respond to this notification. If you have any questions or comments about the proposed rule changes, please use the online comment system found at www.okhca.org/rule-changes. This system allows us to efficiently respond to comments and inquiries regarding our rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dana Miller".

Dana Miller
Indian Health Director

January 2013 Policy Tribal Consultation

Proposed Rule Changes Summaries

1. **12-03 Rural Health Clinics Update**— Rural Health Clinics policy is revised to allow RHCs to bill lab services separately, as they can under Medicare. RHC policy is also updated to eliminate language that is inapplicable to OHCA's current operational practices.
Budget Impact: Budget neutral
2. **12-13 ICD-9 Removal**— Agency policy is revised to remove references to the ICD-9 International Classification of Diseases diagnosis coding, which is being replaced by a new system of coding, ICD-10.
Budget Impact: Budget neutral
3. **12-14 Certified Nurse Midwife-** OHCA rules for Nurse Midwives and Birthing Center services are being revised to align with current obstetric policy. Proposed changes include clarification concerning the type of nurse midwife approved to provide SoonerCare services, and the services the nurse midwife can provide to eligible members. Additionally, proposed revisions include clean-up to remove language that references outdated practices concerning enrollment, and format changes for consistency and clarity purposes.
Budget Impact: Budget neutral
4. **12-15 Genetic Testing** — Policy will be amended to define the circumstances under which genetic testing will be covered by OHCA. Both the volume and cost of genetic testing are growing, and the growth rates are expected to rise significantly going forward. Currently, OHCA has no written policy addressing the medical necessity of genetic testing, although claims are being paid through nonspecific laboratory codes.

Policy will set medical necessity criteria similar to other Medicaid states and private insurance, which requires the member to undergo a genetic risk assessment or display clinical evidence indicating a chance of a genetic abnormality AND that those results change treatment, change health monitoring, provide prognosis, or provide information needed for genetic counseling for the patient.

Budget Impact: Budget neutral

5. **12-19 Outpatient Behavioral Health –**
 1. ODMHSAS is proposing rule revisions to disallow coverage of Psychosocial Rehabilitation (PSR) services for children below age 6 unless services are medically necessary and required pursuant to Federal Early and Periodic Screening Diagnostic and Treatment (EPSDT) laws.
 2. The Agency is also proposing rule revisions which will control utilization of Rehabilitation services by imposing limits on the number of units that qualified providers will be reimbursed. The utilization limits will be prior authorized by OHCA or its designated agent and will be directly correlated to the individual member's level of need.
 3. Utilization parameters will be increased for Medication Training and Support.
 4. Revised rules also change the provider qualifications for Behavioral Health Rehabilitation Specialists including specific degree, certification & training requirements. Proposed revisions to Behavioral Health Case Management rules change provider qualifications for Case Managers including specific degree and

training requirements as well as remove documentation submission requirements as a condition of payment for the provision of case management services.

5. Revisions are also proposed to clearly state that services must be conducted in a setting that protects and assures confidentiality, and must be provided as a direct face-to-face service with the member in order to be compensable.
6. Licensed Behavioral Health Provider rules are revised to correct references to the Agency's behavioral health provider manual.

Budget Impact: \$1.2 million in state savings (ODMHSAS), \$4 million in federal savings

6. **12-20 Telemedicine** - OHCA rules for Telemedicine are being revised to include specific provider responsibilities to assure compliance with HIPAA guidelines. Current policy is silent to the appropriate HIPAA compliant applications, guidelines, devices, and/or safeguards concerning telemedicine services. The proposed revisions include additional conditions that apply to services rendered via telemedicine, provider responsibilities, and additional network standards as they relate to assuring HIPAA compliance during telemedicine related transmissions.

Budget Impact: Budget neutral

7. **12-21 Therapy Provider Qualifications** – OHCA rules for therapy services are being revised to add “services may be provided under the direction of a qualified provider.” The purpose of this change is to allow students and other non-qualified providers to participate in the care of SoonerCare members while under the direct supervision and guidance of a qualified provider.

Budget Impact: Budget neutral

8. **12-22 Transportation** – OHCA rules are revised define emergency and urgent as it relates to ambulance transports; rules are also to revised to clarify that out of state transports require a prior authorization. Additional revisions include clean-up to remove obsolete language to align with current practices.

Budget Impact: Budget neutral

9. **12-23 SoonerRide-** OHCA rules are revised to move meal and lodging related services to general provider policies as these services are not considered SoonerRide services. Additional revisions include clean-up to outdated Code of Federal Regulation references, and clarification concerning approved escorts.

Budget Impact: Budget neutral

10. **12-24 Insure Oklahoma** – OHCA rules are revised to align policy with state and federal requirements; additionally rules are revised to align adult outpatient behavioral health services with children outpatient behavioral health services in the Individual Plan.

Budget Impact: Budget impact yet to be determined

11. **12-25 Dental clarification changes** – SoonerCare dental rules are revised to update pulp cap language to align with current practice and language contained in OAC 317:30-5-699. In addition, OAC 317:30-5-700 (C) Orthodontic rules are revised to align OHCA current verification of continuing education policy with the Oklahoma Board of Dentistry prerequisite licensing requirement. The amendment change to OHCA policy will require all General and Pediatric dentists providing orthodontic care to complete 60 hours of continuing education hours and at least 20 hours of continuing education in the field of orthodontics every (3) three year cycle.

Budget Impact: Budget neutral

- 12. 12-29 Community Spouse Allowance** – Rules are amended to clarify that a member receiving Home and Community Based Services (HCBS) (such as ADvantage) is considered a community spouse for the purpose of calculating the community spouse allowance when his/her spouse is in a nursing facility. This amendment brings the rules into compliance with Federal law and regulation and the State Plan. It allows the spouse in the nursing facility to deem income to the spouse who remains at home, regardless of whether that spouse is receiving HCBS, before the vendor payment owed to the nursing facility is calculated.

Budget Impact: \$500,000 state share, \$1.3 million total

- 13. 12-30 Medically Fragile Waiver Services** - Rules are revised to add Institutional Transition Services and Self-Directed Goods and Services to the Medically Fragile Waiver Program. Additional revisions include removing language that does not align with program practices, for consistency and clarity purposes.

Budget Impact: Budget neutral

- 14. 12-31 My Life; My Choice Waiver Services** - Rules are revised to add Institutional Transition Services, Assisted Living Services and Self-Directed Goods and Services to the My Life; My Choice Waiver Program. Additional revisions include removing language that does not align with program practices, for consistency and clarity purposes.

Budget Impact: Budget neutral

- 15. 12-32 Sooner Seniors Choice Waiver Services** - Rules are revised to add Institutional Transition Services, Assisted Living Services and Self-Directed Goods and Services to the Sooner Seniors Waiver Program. Additional revisions include removing language that does not align with program practices, for consistency and clarity purposes.

Budget Impact: Budget neutral

- 16. 12-33 SHOPP overpayment and recoupment procedures** - SHOPP rules are revised to clarify overpayment and recoupment procedures, if it is determined due to appeal, penalty, or other reason that additional allocation/ recoupment is necessary.

Budget Impact: Budget impact yet to be determined.

- 17. 12-34 State Plan Personal Care**

Rules for State Plan Personal Care are revised to clarify compliance with the Long Term Care Security Act regarding background checks for providers of direct patient access for long term care services. The Long Term Care Security Act includes a listing of mandatory registry checks and requirements for background investigations and fingerprinting. The Act also requires that all background checks are to be administered through the Oklahoma State Department of Health (OSDH).

Budget Impact: Budget neutral

- 18. 12-35 Vaccine Administration** — Agency policy is amended to allow for reimbursement of a separately payable administration fee for vaccines given to adults. Further, the policy clarifies Vaccine for Children Program administration fee rules.

Budget Impact: \$859,000 state and federal

- 19. 12-37 Genetic Counseling**—Policy is amended to expand genetic counseling services to all members that are eligible for medically necessary genetic testing. Currently, we only cover genetic counseling for members with a pregnancy at high risk of genetic abnormalities.

Budget Impact: \$125,000 state and federal

20. 12-38 Electronic Health Records Updates— Policy on the Oklahoma Electronic Health Records Incentive Program will be updated to account for changes in federal rules on the program. Changes include adding additional options for patient volume calculation, expanding the definition of a Children's Hospital, adding an exception to the hospital-based eligible professional criteria, and allowing CMS to take over administrative appeals for cases in which they are the auditor on meaningful use provisions.

Budget Impact: Budget neutral

21. 12-39 Tobacco Cessation Counseling – OHCA rules are revised to expand provider types for tobacco cessation counseling to include Registered Nurses and Licensed Clinical Social Workers. The purpose of the proposed rule revision is to increase opportunities for SoonerCare members to access quality cessation services.

Budget Impact: Budget impact not yet determined

22. 12-40 Inpatient Behavioral Health –

1. Agency Inpatient Psychiatric Hospital rules are being revised to clarify the medical necessity criteria required for admission and continued stays in psychiatric residential treatment facility (PRTF) and acute levels of care.
2. Changes are also being proposed to the rules regarding Individual Plans of Care to ensure early parent/guardian involvement in the treatment of children under the age of 18 receiving inpatient psychiatric services as well as
3. to revise the "active treatment" requirements for individuals 18-21 years of age receiving services in an acute psychiatric hospital by making the requirements less proscriptive for this age group since they typically do not receive services in children's psychiatric units, so providers should not be held to the same requirements.
4. Active treatment requirements for children under 18 are further revised to provide more clarity in areas that have been identified as causing provider confusion.
5. Proposed revisions will also revise Inspection of Care (IOC) rules to provide the pro-rating timeline used when reviewing clinical documentation for compliance with active treatment requirements as well as to clarify that certain "critical documents" cannot be substituted with other evaluations/assessments.

Budget Impact: Budget neutral

23. 12-Y Kinship Guardianship Assistance Recipients - Eligibility rules are amended to add the mandatory eligibility group of children receiving Kinship Guardianship Assistance. Once the State has established a kinship guardianship assistance program, SoonerCare eligibility is mandated by federal laws and regulations. These amendments will provide eligibility coverage whether the child receives the assistance through the program established by OKDHS or through kinship guardianship programs that may be established by tribes in the future.

Budget Impact: Budget neutral

24. 12-KK Compliance with ACA Eligibility Rules - Eligibility rules are amended to provide that eligibility for children, pregnant women, and parents and caretaker relatives is determined using the Modified Adjusted Gross Income (MAGI) methodology, as mandated by ACA. Rules are amended to add two eligibility groups mandated by the ACA: Former foster care children aged 19-26, and CHIP children who would lose eligibility as a result of

the MAGI method. Rules regarding eligibility determination procedures are amended to establish the passive renewal process mandated by ACA, as well as the ACA rule that medical verification of pregnancy can only be required when the individual's declaration that she is pregnant is not reasonably compatible with other information available to the agency.

Budget Impact: Budget impact yet to be determined

- 25. 12-AAA Authorized Representatives** - Eligibility rules are amended to 1) define the role of an authorized representative; 2) establish tiers of authorization members may designate for their representatives; 3) define who may act as an authorized representative; 4) provide that no one may charge or receive a fee for applying on someone else's behalf; 5) provide that if an authorized representative is employed or contracted by a SoonerCare provider and that representative either cannot provide documentation that the member consented to the designation, or provides false information, or withholds information that leads to an ineligible person being certified for SoonerCare, that these actions are grounds for recoupment of claims paid for the member in question during the certification period in question; and 6) provide that the maximum time a member's designation of an authorized representation will last is 12 months.

Budget Impact: Budget neutral

- 26. 12-LLL Elimination of Presumptive Eligibility for Pregnant Women** - Eligibility rules are amended to eliminate presumptive eligibility (PE) for pregnant women. Under the PE program, certain qualified SoonerCare providers used to determine pregnant women presumptively eligible for SoonerCare; the women then had 30 days to apply and be fully determined eligible or ineligible. The purpose of PE was to give pregnant women access to care quickly. PE is no longer used because pregnant women can now have their eligibility fully determined in real-time through Online Enrollment.

Budget Impact: Budget neutral

- 27. 12-UUU Nursing Facility Policy Clean-up**

The proposed rule change adds language clarifying that all program requirements set out in State Statute and Oklahoma Health Care Authority policy regarding wage enhancements for certain nursing facility employees have been met. The proposed rule change also clarifies that the Quality of Care fee assessed by the Oklahoma Health Care Authority is authorized through the Medicaid State Plan and clarifies that part of the fee structure is based on a waiver of uniformity as approved by the Centers for Medicare and Medicaid Services (CMS). Finally, proposed revisions include the removal of language incorrectly stating that rates for public ICF's/MR are set through a public rate setting process rather than the current practice of reimbursement based on cost reports. Other minor policy clarifications are also included as a part of the proposed rule change.

Budget Impact: Budget neutral

- 28. 12-VVVV – Long Term Care Sub-Acute Hospital Reimbursement Methodology**

OHCA proposes to amend Long Term Care (LTC) Sub-Acute Hospital policy to update reimbursement language from a prospective per diem methodology to a cost based methodology. This proposed change is to bring policy in alignment with the approved State Plan LTC reimbursement methodology.

Budget Impact: Budget neutral

Proposed State Plan Changes and Waiver Changes

State Plan Amendments (Expedited Timeframe)

The State is seeking to invoke the expedited (14 days) consultation as authorized under the state plan. All three of these changes are clarifications to bring the state plan in compliance with current practice, including the date for the awarding of the Recovery Audit Contractor Program, and do not necessitate any additional changes.

- 1. Item A-**The OHCA proposes to amend the Oklahoma Medicaid State Plan as it relates to the Recovery Audit Contractor Program (RAC). Section 1902(a)(42)(B)(i) mandates states to contract with RACs to identify underpayments and overpayments and recouping overpayments under the State plan and under any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver. The OHCA requested and was approved an extension for implementation of the RAC until the OHCA could obtain a contractor through a competitive bid procurement process. The OHCA originally anticipated having a contract in place by August 1, 2012 however, due to unforeseen delays, the OHCA did not have a RAC contract in place by the original date denoted in the state plan. Therefore, the state plan must be updated with a new target date. The OHCA has solicited bids for the RAC and evaluations have been conducted. The OHCA anticipates having a contract in place no later than March 1, 2013. The OHCA will submit a state plan amendment to change the implementation date in the current state plan from no later than August 1, 2012 to no later than March 1, 2013.
- 2. Item B-**The OHCA proposes to amend the Oklahoma Medicaid State Plan to correct a technical error. Current eligibility income levels for Children and Pregnant Women under Title XIX of the Oklahoma State Medicaid Plan are at or below 185% of the FPL. Parents of children are at or below 73% of the AFDC Need Standard (which is approximately 32% of the FPL). During a previous amendment in 2008, parents of children were erroneously included in the 185% FPL with children and pregnant women. The State has never implemented and has no future intentions of expanding income limits for parents of children to 185% of the FPL. The OHCA will submit a state plan amendment to correct the income limit for parents of children from 185% to at or below 73% of the AFDC Need Standard in accordance with OAC Title 317 promulgated rules and current practices.
- 3. Item C-**The OHCA is proposing to amend the Part 4.19D page 7.1 of the State Plan to correct an error in the Employee Satisfaction metric to 65 from 50. The original Rates and Standards and public notices were made at the correct level of 65 but the State Plan amendment was filed as 50; we are adjusting the State Plan to correct this oversight. The Metric is one of 10 used to determine the score of a facility participating in the Focus on Excellence Quality Rating Program.

State Plan Amendments (Regular Timeframe)

- 1. Compliance with ACA Eligibility Rules (reference 12- KK, item 24 of proposed rules) -** The State intends to submit Title XIX and Title XXI State Plan Amendments to provide that eligibility for children, pregnant women, and parents and caretaker relatives is determined using the Modified Adjusted Gross Income (MAGI) methodology, and to add two eligibility groups mandated by the ACA: Former foster care children aged 19-26, and CHIP children who would lose eligibility as a result of the MAGI method.
- 2. Elimination of Presumptive Eligibility for Pregnant Women (reference 12-LLL, item 26 of proposed rules) -** The State will submit a Title XIX State Plan amendment to eliminate presumptive eligibility (PE) for pregnant women. PE is no longer used because pregnant women can now have their eligibility fully determined in real-time through Online Enrollment.

- 3. Kinship Guardianship Assistance Recipients (reference 12-Y, item 23 of proposed rules)** - The State will submit a Title XIX State Plan amendment to add the mandatory eligibility group of children receiving Kinship Guardianship Assistance. This amendment will provide eligibility coverage whether the child receives the assistance through the program established by OKDHS or through kinship guardianship programs that may be established by tribes in the future.
- 4. Behavioral Health Rehabilitation Specialists (reference 12-19, item 5 of proposed rules)** - The State intends to submit a TXIX State Plan amendment to change the provider qualifications for Behavioral Health Rehabilitation Specialists including specific degree, certification & training requirements, and to change provider qualifications for Case Manager including specific degree and training requirements.
- 5. Prior Authorizations for Outpatient Behavioral Health Rehabilitation Services (reference 12-19, item 5 of proposed rules)**– The State will submit a TXIX State Plan amendment to reinstate prior authorizations.
- 6. Proposed Amendment to the ADvantage Waiver for Home Delivered Meals**
The ADvantage waiver is a 1915(c) Home and Community based services waiver serving adults with physical disabilities and the elderly. One of the services available to ADvantage members is home delivered meals. In order to ensure an adequate number of providers for home delivered meals, the OHCA is proposing to allow out of state vendors to supply frozen, pre-packaged meals to ADvantage members. This amendment requires approval by the Centers for Medicare and Medicaid Services (CMS) as well as OHCA Board approval. The amendment, if approved, will become effective in approximately six months. This is a proposed waiver amendment only and does not affect ADvantage policy.
- 7. Outpatient Behavioral Health Agency Provider Certification (reference 12-19, item 5 of proposed rules)** – The OHCA, in collaboration with ODMHSAS, proposes to amend the Medicaid State Plan in order to ensure consistency throughout the outpatient behavioral health agency provider qualification pages. Revisions were made to the State Plan which became effective July 1, 2012, giving government & private outpatient behavioral health agencies the option of choosing between national accreditation or certification from ODMHSAS, in accordance with state statute. Agency staff has since identified two provisions in the Plan that were inadvertently not revised during the previous amendment process to fully reflect the intent behind the July 1, 2012 changes. OHCA will submit a State Plan Amendment to make the necessary updates in accreditation/certification terminology.
- 8. Removal of Billing Code-Specific Information from State Plan** – The OHCA, in collaboration with ODMHSAS, proposes to amend the Medicaid State Plan in order to remove specific references to the Healthcare Common Procedure Coding System (HCPCS) code H2012 from the State Plan page outlining the reimbursement methodology for Partial Hospitalization (PHP), an outpatient behavioral health service. The Agency has identified a HCPCS code for PHP that is more appropriate for the service than H2012 and removal of the specific code from the plan will enable the Agency to make the appropriate changes to the claims processing system.
- 9. Home and Community Based Transportation-** The OHCA will submit a Title XIX State Plan amendment to remove the reference of “Children Only” as it relates to the non-emergency broker providing transportation to individuals receiving home and community based waiver services who would only be eligible under State plan if in a medical institution. Transportation for this population does not exclude adults; the proposed amendment will bring the State Plan into compliance with practices.