



STATE OF OKLAHOMA  
OKLAHOMA HEALTH CARE AUTHORITY

I/T/U Public Notice 2013-02

March 7, 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 March 13<sup>th</sup>, 2013. As you are aware, there was also an in-person tribal consultation at OHCA regarding these rules on March 5<sup>th</sup>. 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 March 13<sup>th</sup> MAC, you can visit [www.okhca.org/macagenda](http://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](http://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](http://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

## March 2013 Medical Advisory Committee

### Proposed Rule Changes Summaries

#### ADMINISTRATIVE

**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 obsolete language.

**Budget Impact:** Budget neutral

**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

**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

#### **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

**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

#### BEHAVIORAL HEALTH

**12-19 Outpatient Behavioral Health –**

- (1) Effective July 1, 2013, require that in order to qualify as a new Behavioral Health Rehabilitation Specialist (BHRS), individuals must be either an LBHP, CADC or certified as a Case Manager II by ODMHSAS. Individuals designated as BHRS prior to July 1, 2013 will have until July 1, 2014 to meet the new requirements;
- (2) Remove provisions allowing for grandfathering of BHRS and certified case managers who may have met certification requirements prior to the changes made over the years;
- (3) Enhance supervision requirements for BHRS by a LBHP;
- (4) Remove language that, as of July 1, 2013, will no longer be needed since the sunset provisions regarding specific dates when certain services will no longer be reimbursable when provided by Certified Alcohol and Drug Counselors (CADCs) will have passed;
- (5) Increase the number of available units of Medication Training and Support that are available for members from 1 unit per month to 2 units per month;
- (6) Add the ODMHSAS certification option for OPBH Agencies providing case management in lieu of national accreditation as well as to make minor "cleanup" changes to bring policy in line with current practices;
- (7) Align OHCA Behavioral Health Case Management (CM) policy with the certified behavioral health case manager certification policy proposed by ODMHSAS in Title 450 of the Administrative Code. There will now be more distinction within the levels of CM to better align education and training requirements for quality service provision and improve efficiency of the certification process by allowing Licensed Behavioral Health Professionals (LBHPs) and Certified Alcohol and Drug Counselors (CADCs) to provide case management services pursuant to the scope of their licensure/certification rather than requiring these individuals to go through the ODMHSAS certification process; and
- (8) Ensure compliance with laws related to confidentiality, including provisions requiring that services be provided in settings that assure and protect confidentiality.

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

#### **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) 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; and
- (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

## **DENTAL**

**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

## **ELIGIBILITY**

**12-41 A and B 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:** \$1.4 million state share, \$6.3 million federal share

**12-41 A and B 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 federal law. Rules are amended to add two eligibility groups mandated by federal law: 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 federal law, as well as the federal 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:** \$1.4 million state share, \$6.3 million federal share

**12-41 A and B 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:** \$1.4 million state share, \$6.3 million federal share

## **GENETIC TESTING AND COUNSELING**

**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:** \$42,500 state share, \$82,500 federal share

**12-39 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

## **HOSPITALS**

**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 neutral

## **INSURE OKLAHOMA**

**12-24 Insure Oklahoma** – OHCA rules are revised to align adult outpatient behavioral health services with children outpatient behavioral health services in the Individual Plan, which allows 48 visits per year.

**Budget Impact:** \$35,889 state savings, \$63,803 federal savings

## **NURSING FACILITIES AND LONG TERM CARE**

### **12-42 – 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:** \$97,785 state share, \$173,000 federal share

### **12-43 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

## **PREGNANCY-RELATED**

**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

## **PRIVATE DUTY NURSING**

**12-36 Private Duty Nursing Eligible Providers** — Policy will be amended to define eligible private duty nursing providers and require physicians to submit orders in addition to the treatment plan to verify medical need of treatments. OHCA will require a non-custodial caregiver to be the paid employee taking care of the child. Further, policy will be amended to allow for consideration of extenuating circumstances when action to reduce authorized private duty nursing services hours is being taken.

**Budget Impact:** Budget neutral

## **TRANSPORTATION**

**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

**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

## **VACCINES**

**12-35 Vaccine Administration** — Agency policy is amended with respect to vaccine administration as follows: For adults, the change will allow for reimbursement of a separately payable administration fee for vaccines given to adults. For children, the policy clarifies Vaccine for Children Program administration fee rules to state VFC providers may not charge multiple administration fees per shot.

**Budget Impact:** \$60,000 state share, \$110,000 federal share

## **WAIVER SERVICES**

**12-04 ADvantage Waiver Services** - Rules are revised to (1) establish a maximum annual reimbursement cap for hospice services for members who exceed the waiver cost limit (2) disallow an active Power of attorney from being a paid caregiver for members self-directing their services (3) increase the maximum hours of Adult Day Health services to six hours (4) clarify the member/ provider dispute resolution process.

**Budget Impact:** \$193,539 state share, \$344,404 federal share

**12-05 Living Choice Demonstration Services** - Living Choice demonstration program rules are revised to include clarification for billing of Institutional Case Management Transition services and the inclusion of additional services for persons with physical disabilities and long term illnesses.

**Budget Impact:** \$5,800 state share, \$26,320 federal share

**12-27 Agency Companion and Foster Care Responsibilities** – Rules for SoonerCare Home and Community Based Waiver Services (HCBS) programs for persons with intellectual disabilities are amended to clarify responsibilities for Agency Companion providers and Specialized Foster Care providers regarding reporting requirements when there are allegations of member maltreatment. The rules clarify that the Office of Client Advocacy must be contacted in the event of allegations of maltreatment involving an adult and an abuse hotline must be utilized in the event that the

maltreatment involves a child. Rules are also amended to clarify that the Agency Companion must obtain prior approval from the member's representative payee before making purchases over \$50 on behalf of the member.

**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, \$800,000 federal share

**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

**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. (If a member is approved for the Assisted Living Services bundle, the member is responsible for payment of room and board charges.) Additional revisions include removing language that does not align with program practices, for consistency and clarity purposes.

**Budget Impact:** Budget neutral

**12-32 Sooner Seniors 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. (If a member is approved for the Assisted Living Services bundle, the member is responsible for payment of room and board charges.) Additional revisions include removing language that does not align with program practices, for consistency and clarity purposes.

**Budget Impact:** Budget neutral