

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 18, 2022

The proposed policy changes are Permanent Rules. The proposed policy changes were presented at the November 2, 2021 Tribal Consultation. The proposed rule changes will be presented at a Public Hearing on January 18, 2022. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on January 13, 2022 and the OHCA Board of Directors on March 16, 2022.

REFERENCE: APA WF 21-02A

SUMMARY:

OHS ADvantage Waiver Services and State Plan Personal Care Services – The proposed revisions will align policy with the recently approved 1915c ADvantage waiver renewal and current State Plan Personal Care services authority. Updated policy will provide clarity surrounding eligible provider certification and will also modify procedures to reflect current business practices. Final revisions will correct formatting and grammatical errors.

LEGAL AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 1915c ADvantage Waiver; 42 C.F.R. Section 440.167

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 21-02A

A. Brief description of the purpose of the rule:

The proposed revisions will align policy with the recently approved 1915c ADvantage waiver renewal and current State Plan Personal Care services authority. Updated policy will provide clarity surrounding eligible provider certification and will also modify procedures to reflect current business practices. Final revisions will correct formatting and grammatical errors.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

The classes of persons affected by the approved amendments are recipients of ADvantage or State Plan Personal Care services and their providers. No cost impacts are anticipated.

- C. A description of the classes of persons who will benefit from the proposed rule:

The classes of persons affected by the approved amendments are recipients of ADvantage or State Plan Personal Care services and their providers. No cost impacts are anticipated

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The proposed rule changes are budget neutral.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule will not have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule will not have an adverse effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The Agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no effect on the public health, safety, and environment.

- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:

The Agency does not anticipate any detrimental effect on the public health, safety, or environment if the proposed rule changes are not implemented.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared:

RULE TEXT

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

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-761. Eligible providers

ADvantage Program ADvantage Administration (AA) certifies ADvantage Program service providers, except pharmacy providers, must be certified by the ADvantage Program ADvantage Administration (AA) and must they have a current signed SoonerCare (Medicaid) contract on file with the Oklahoma Health Care Authority (OHCA), the State Medicaid agency.

(1) The provider programmatic-certification process ~~must verify~~ verifies the provider meets licensure, certification, and training standards as specified in the waiver document ~~and agrees to ADvantage Program Conditions of Participation. Providers~~ All providers, except nursing facility (NF) respite; medical equipment and supplies; and environmental modification providers, must obtain programmatic-certification to be ADvantage program certified.

(2) The provider financial-certification process ~~must verify that~~ verifies the provider uses sound business management practices and has a financially-stable business. All providers, except for ~~nursing facility (NF)~~ NF respite; medical equipment and supplies; and environmental modification providers, ~~must will~~ obtain financial certification to be ADvantage program certified.

(3) At minimum, provider financial certification is re-evaluated annually.

~~(3)~~ (4) Providers may fail to gain or may lose ADvantage program certification due to failure to meet programmatic or financial standards.

~~(4) At a minimum, provider financial certification is reevaluated annually.~~ (5) All provider service types must agree to the Conditions of Provider Participation and Service Standards.

~~(5) The Oklahoma Department of Human Services (DHS) Aging Services (AS) evaluates adult day health and home-delivered meal providers for compliance with ADvantage programmatic-certification requirements. When an adult day health or home-delivered meal provider does not~~

have a contract with AS, the provider must obtain programmatic certification to be ADvantage Program certified. Providers of medical equipment and supplies, environmental modification, personal emergency response systems, hospice, Consumer Directed Personal Assistance Services and Supports (CD-PASS), and NF respite services do not have a programmatic evaluation after the initial certification.

(6) ~~DHS AS~~ The Oklahoma Human Services (OKDHS) Community Living, Aging and Protective Services (CAP) does not authorize the member's CD-PASS services provider to also have an active power of attorney of afor the member to be the member's CD-PASS services provider.

(7) ~~DHS AS~~ OKDHS CAP may authorize a member's legally-responsible spouse or legal guardian to be SoonerCare (Medicaid) reimbursed, per 1915(c) ADvantage Program as a personal care, service provider. Authorization for a spouse or legal guardian as a provider requires the criteria in (A) through (D) of this paragraph and monitoring provisions to be met.

(A) Authorization for a spouse or legal guardian to be ~~the~~ a member's care provider for a member may occur only when the member is offered a choice of providers/provider choice and documentation demonstrates:

(i) ~~no~~ No provider included on the Certified Agency Report (CAR) or in the member's service area, has available staffing; ~~This is as evidenced by supportive documentation, which Documentation also affirms no provider within the members service area can staff and~~ all area providers attempt to employ staff to serve; or

(ii) ~~the~~ The member's needs are so complex that unless the spouse or legal guardian provides the care, the member's risk level would increase; and

(iii) ~~it~~ It is mentally or physically detrimental for someone other than the spouse or legal guardian to provide care. This is evidenced by ~~the~~ documentation from a qualified clinician or medical provider, such as a physician or licensed psychologist.

(B) The service ~~must~~:

(i) ~~meet the~~ Meets service or support definition ~~of a service/support~~ as outlined in the federally-approved waiver document;

(ii) ~~be~~ Is necessary to avoid institutionalization;

(iii) ~~be~~ Is a ~~service/support~~ service or support specified in the person-centered service plan;

(iv) ~~be~~ Is provided by a person who meets the provider qualifications and training standards specified in the waiver for that service;

(v) ~~be~~ Is paid at a rate that does not exceed ~~that which would otherwise be~~ what is paid to a provider of a similar service and does not exceed what is allowed by OHCA allows for the payment of personal care or personal assistance services; an payment; and

(vi) ~~not be~~ Is not an activity the spouse or legal guardian would ordinarily perform or is responsible to perform.

(C) The spouse or legal guardian service provider complies with:

(i) ~~providing~~ Providing no more than forty (40) service hours of services in a ~~seven-day~~ seven (7) day period;

(ii) ~~planned~~ Planned work schedules that ~~must be~~ are available in advance for the member's case manager, and variations to the schedule ~~must be~~ are noted and supplied

to the case manager two (2) weeks in advance unless the change is due to an emergency;

(iii) ~~maintaining~~Maintaining and submitting time sheets and other required documentation for hours paid; and

(iv) ~~the~~The person-centered service plan as the member's care provider.

(D) In addition to case management, monitoring, and reporting activities required for all waiver services, the State is obligated to additional monitoring requirements when members elect to use a spouse or legal guardian as a paid service provider. The AA monitors, through quarterly documentation ~~submitted by the case manager,~~ submits, the continued appropriateness of the policy exception that allows the spouse or legal guardian to serve as the member's paid caregiver.

(8) ~~Providers of durable~~Durable medical equipment and supplies ~~must~~providers comply with Oklahoma Administrative Code 317:30-5-210(2) regarding delivery proof of ~~delivery~~ for items shipped to the member's residence.

(9) ~~DHS ASOKDHS CAP~~ periodically performs a programmatic audit of: ~~adult day health, assisted living, case management, home care (providers of skilled nursing, personal care, in-home respite, and advanced supportive/restorative assistance and therapy services) and CD-PASS providers. When due to a programmatic audit, a provider Plan of Correction (POC) is required, the AA may stop new cases and referrals to the provider until the (POC) is approved, implemented, and follow-up review occurs. Depending on the nature and severity of problems discovered during a programmatic audit and at the discretion of the DHS AS, members determined to be at risk for health or safety may be transferred from a provider requiring a POC to another provider.~~

(A) Adult day health;

(B) Assisted living;

(C) Case Management;

(D) Home care:

(i) Skilled nursing;

(ii) Personal care;

(iii) In-home respite; and

(iv) Advanced supportive or restorative assistance; and

(v) Therapy services; and

(E) CD-PASS providers.

(10) When, due to a programmatic audit, a provider plan of correction (POC) is required, the AA may stop new cases and referrals to the provider until the POC is approved, implemented, and a follow-up review occurs. Depending on the nature and severity of problems discovered during a programmatic audit (and at OKDHS CAP discretion), members determined to be at risk for health or safety may be transferred from a provider requiring a POC to another provider.