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 2, 2024

The proposed policy changes are Permanent Rules. The proposed policy changes were presented at the Tribal Consultation held on October 31, 2023. The proposed rule changes will be presented at a Public Hearing on January 8, 2024. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on January 4, 2024, and the OHCA Board of Directors on January 17, 2024.

REFERENCE: APA WF 23-25A

SUMMARY:

Advantage and State Plan Personal Care Revisions - The proposed rule revisions for the 1915(c) Home and Community Based Services (HCBS) ADvantage Waiver program and State Plan Personal Care Services seek to remove outdated processes, reduce unnecessary timeline and procedural burdens, clarify modalities used in medical eligibility assessments, and match recent system changes. Proposed revocations remove individual personal care assistants (IPCA) which are no longer used in these programs. Resumption of services information is removed from the closure section to reduce duplication. Proposed revisions also add Living Choice as a referral option when appropriate and provide general cleanup to the language.

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 1915(c) of the Social Security Act

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 23-25A

A. Brief description of the purpose of the rule:

The proposed revisions are requested following an extensive review of rules related to ADvantage and State Plan Personal Care in Chapters 30 and 35 of Title 317. Updates are needed to remove outdated processes, to reflect current processes and systems, to add clarity and correct references, and to reduce burdensome timelines for case management requirements as appropriate.

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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:

Recipients and providers of ADvantage Waiver services and State Plan Personal Care services will be affected by the timeline changes. This rule should not place any cost burden on public or private entities. No information on any cost impacts were received from any entity.

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

The proposed rule changes will benefit providers of ADvantage Waiver services and State Plan Personal Care services. The proposed changes will also benefit recipients of those services, and agency oversight and management of those services.

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:

Agency staff has determined that the proposed 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.

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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: October 19, 2023

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~~The ADvantage Administration (AA) certifies ADvantage Program service providers, except pharmacy providers~~,~~. ~~and they~~Providers must 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~~certification process verifies the provider meets licensure, certification, and training standards, and uses sound business management practices and has a financially stable business, as specified in the waiver document. All providers, except nursing facility (NF) respite; medical equipment and supplies; and environmental modification providers, must ~~obtain programmatic certification~~meet certification requirements to be ADvantage program certified.

(2) ~~The provider financial certification verifies the provider uses sound business management practices and has a financially stable business. All providers, except for~~ NF respite~~;~~, medical equipment and supplies~~;~~ and environmental modification providers~~,~~ will ~~obtain financial certification to be ADvantage program certified~~verify the provider meets licensure and certification standards as applicable.

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

(4) Providers may fail to gain or may lose ADvantage program certification due to failure to

meet programmatic or financial standards.
(5) All provider service types must agree to and sign the Conditions of Provider Participation and Service Standards.
(6) The Oklahoma Human Services (OKDHS) Community Living, Aging and Protective Services (CAP) does not authorize the member's ~~CD-PASS~~CDPASS services provider to also have an active power of attorney for the member.
(7) 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 a member's care provider may occur only when the member is offered provider choice and documentation demonstrates:

(i) No provider included on the Certified Agency Report (CAR) or in the member's service area, has available staffing. Documentation also affirms all area providers attempt to employ staff to serve; or

(ii) 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~~ or

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

(B) The service:

(i) Meets service or support definition as outlined in the federally-approved waiver document;

(ii) Is necessary to avoid institutionalization;

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

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

(v) Is paid at a rate that does not exceed what is paid to a provider of a similar service and does not exceed what OHCA allows for personal care or personal assistance services payment; and

(vi) 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 no more than forty (40) service hours of services in a seven (7) day period;

(ii) Planned work schedules that are available in advance for the member's case manager, and variations to the schedule are noted and supplied to the case manager two (2) weeks in advance unless the change is due to an emergency;

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

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

(v) Continuing non-reimbursed family responsibilities of primary caregiver and emergency backup caregiver.

(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 case manager must visit the member at least monthly to monitor the continued appropriateness ~~The AA monitors, through quarterly documentation 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, and document findings in the member's electronic record.

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

~~(9)~~ OKDHS CAP periodically performs a ~~programmatic~~provider audit of:

(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~~CDPASS providers.

~~(10)~~(9) When, due to a ~~programmatic~~provider audit, a provider plan of correction (POC) is required, the AA may stop new cases and referrals to the provider, by removing from the CAR, 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.

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